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The Solicitors' Journal

[Established 1857.] [Registered as a Newspaper.]

VOL. LXXVII. No. 32 [Pages 561 to 576]. Saturday, August 12, 1933. Published Weekly. Price One Shilling.

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The Solicitors' Journal

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Current Topics.

Judges and Public Inquiries.

CONSIDERING the erroneous impression prevailing in certain circles as to the lack of broad-mindedness and statesmanlike qualities of those trained in the law, it is surely significant that the services of members of the judiciary are so frequently invoked when public and difficult questions call for investigation. The fact that our judges are thus so often entrusted with the conduct of such inquiries is of itself sufficient to refute the popular misconception to which we have referred—a misconception certainly not shared by those in authority. Why is it that the choice of chairman of inquiries of a public and intricate nature should thus frequently fall upon members of the Bench? Is it not because by their training they have been habituated to suspending their judgment till all the evidence relevant to the question under discussion has been adduced, and not till then do they venture to form and express a final opinion? This implies restraint, and a suspension of judgment till all the facts have been ascertained. Such is the ideal aimed at and usually attained by holders of judicial office, and this they carry with them into the various inquiries which they are asked to undertake. Among the present members of the judiciary, Lord MACMILLAN, who has just been appointed Chairman of the Royal Commission to inquire into the working of the Canadian Bank Act preparatory to its decennial revision, and to report upon the various monetary problems confronting the Government, must surely hold the record in the number of commissions and committees of a public nature over which he has presided within the last few years. The most diverse subjects have been investigated by him—lunacy and mutual disorder, coal mining, street offences, finance and industry, income tax, wages in the wool industry—and to this strangely assorted list of questions he has brought to bear those great qualities of mind, and gift of lucid expression which we have found conspicuous in the judgments he delivers in the House of Lords. The report for which he was mainly responsible on finance and industry issued in 1929 was a masterly document revealing a complete grasp of the multifarious and complex questions involved. It may be worth recalling that in his youth at the Scots Bar he did not disdain filling the comparatively humble, although useful, rôle of a law reporter, being attached for a time to the staff of our contemporary the *Scots Law Times*, and, further, that for several years he conducted with distinction the editorship of the *Juridical Review*.

Invisibility and Inaudibility of Counsel.

DESPITE a certain laxity in the matter of professional costume that has crept in during recent years—a laxity which would have excited the animadversion of old-fashioned judges like Mr. Justice BYLES who on one occasion remarked to Mr. (afterwards Lord Chief Justice) COLERIDGE, who was appearing before him: "Mr. Coleridge, I never listen with any pleasure to the arguments of counsel whose legs are encased in light grey trousers"—it is still *de rigueur* for counsel in court to be attired in wig, gown and bands, the outward and visible sign that he is a member of the Bar. Only the other day a member of the Bar was "invisible" when at Quarter Sessions in the North a prisoner desired his services on a dock brief, the difficulty being, however, overcome very quickly by the momentary disappearance of the counsel in question and his almost immediate reappearance professionally attired, and, as such, ready and willing to render the assistance desired of him. Without his wig, bands and gown a barrister who desires to be heard cannot be "seen" in open court—we exclude for the moment inferior judicatories like police-courts—nor can he be "heard," but even when garbed with his professional panoply it may be that owing to some sartorial idiosyncrasy he may be "inaudible." Light waistcoats have before now been held to obscure the vision of the judge, who failed to see the counsel desirous of addressing him. Was it not the late Mr. Justice KEKEWICH who addressed counsel thus: "Mr. Blank, I cannot hear you, your waistcoat is too loud?" And that learned judge is not the last to quarrel with the hue of a waistcoat or coat which prevented the remarks addressed to the court being audible. At the Scots Bar the like professional conformity in dress appears to obtain although bands are not there worn, their place being taken by a dress tie, which at one time, and that not so long ago, was worn with the bands by English barristers in court. The necessity of the wig being worn in court was not so strongly insisted upon in Scotland at one time as it was in England, although now, as has been said, it is *de rigueur* in the North. FRANCIS JEFFREY, afterwards a judge of the Court of Session, rarely wore his wig save when appearing in the House of Lords, and it is said that JOHN PARK, who became a member of the Scots Bar in 1829, was the last advocate of modern days who appeared at the Bar without a wig.

The Finality of Judgments.

THE County Courts Act, 1888, s. 93, provides that every judgment and order of the court shall be final and conclusive

between the parties, although the judge shall, in every case whatever, have the power (if he shall think just) to order a new trial upon such terms as he shall think reasonable. This discretion must be exercised judicially, however, and the correction of a mistake must not involve a reversal of the judgment—this being within the sole province of the Divisional Court. See *Astor* v. *Barrett and Another* [1920] 3 K.B. 633. Greater latitude is allowed under the Workmen's Compensation Acts, 1925 to 1930, as shown by the recent case of *Wheelock* v. *Clay Cross Colliery Co. Ltd.*, at Alfreton County Court. An application was made by the respondents to vary the award by the omission of an adopted child as a dependant, in accordance with the decision of the Court of Appeal in *Ward* v. *Dorman Long & Co., Ltd.*, reported 77 SOL. J. 484. His Honour Judge LONGSON ordered the award to be re-drafted accordingly, and the respondents were allowed the costs of the application, whereby the costs of an appeal (which would inevitably have been successful) had been avoided. The parties further agreed to be bound by any decision of the House of Lords in the last-named case, although it was understood that no further appeal therein was contemplated. Legislation is, therefore, necessary for the removal of the hardship mentioned in the Current Topic "The Dependency of Adopted Children" (77 SOL. J. 494), and such legislation should apparently be retrospective. Another case of hardship occurred in *Rudd* v. *Elder Dempster & Co. Ltd.* [1933] W.N. 9, which was discussed in the leading article "Actions for Damages by Injured Workmen" (77 SOL. J. 329). The plaintiff obtained judgment for £3,000 at Liverpool Assizes for personal injuries, but this was reversed by the Court of Appeal, on grounds which have now been disapproved by the House of Lords in *Lochgelly Iron & Coal Co. Ltd.* v. *M'Mullan* [1933] W.N. 192. Unfortunately the judgment in the *Rudd Case* was given on the 16th December, 1932, so that the six months (for an appeal to the House of Lords) expired on the 16th June, 1933. The *Lochgelly Case* (having been heard by the House of Lords on the 16th, 18th and 19th May, 1933) was then adjourned *sine die*, and judgment was given on the 11th July, 1933.

Community Risks and Workmen's Compensation.

IN giving the judgment of the Judicial Committee of the Privy Council in *Brooker* v. *Thomas Borthwick & Sons (Australasia), Ltd.*, on 28th July (77 SOL. J. 556), Lord ATKIN succinctly stated the principle which must guide the court in deciding when accidents resulting from "community risks" or natural forces, such as earthquakes or lightning, are accidents arising "out of the employment" within the meaning of the Workmen's Compensation Acts. The occasion was the hearing of four consolidated appeals from judgments of the Court of Appeal of New Zealand, which had decided that accidents to workmen resulting from the earthquake in the Hawke's Bay district of New Zealand on 3rd February, 1931, did not arise "out of" the employment within the meaning of s. 3 of the New Zealand Workers' Compensation Act, 1922. In all the cases death or injury resulted from the collapse of buildings or falling débris. In giving the opinion of the Committee, Lord ATKIN stated that "if a workman was injured by some natural force such as lightning, the heat of the sun, or extreme cold, which in itself had no kind of connection with employment, he could not recover unless he could sufficiently associate such injury with his employment. That he could do if he could show that the employment exposed him in a special degree to suffering such an injury. But if he was injured by contact physically with some part of the place where he worked, then, apart from questions of his own misconduct, he at once associated the accident with his employment, and nothing further need be considered. So that if the roof or walls fell upon him, or he slipped on the premises, there was no need to make further inquiry as to why the accident happened." The final decision on the matter had been given, in their lordships' opinion, in *Simpson* v. *Sinclair* [1927] A.C. 127, in which a fish curer, engaged in packing kippered herrings on her employer's premises, was injured by the collapse of the building caused by the fall of a neighbouring wall not belonging to her employer. Lord HALDANE in that case said: "It is enough that by the terms of her employment the appellant had to work in this particular shed, and was, in consequence, injured by an accident that happened to the roof of the shed." Two cases of lightning, *Andrew* v. *Failsworth Industrial Society, Ltd.* [1904] 2 K.B. 32, and *Kelly* v. *Kerry County Council*, 1 B.W.C.C. 194; two cases of frostbite, *Karemaker* v. *s.s. Corsican*, 4 B.W.C.C. 295, and *Warner* v. *Couchman* [1912] A.C. 35; and one of street risk, *Dennis* v. *White* [1917] A.C. 479, were also cited in support of the principle stated. Their lordships therefore advised His Majesty to allow the appeals, with costs. Problems turning on the words in question in this case are always difficult owing to the extraordinarily large number of cases on the point, as well as the somewhat metaphysical possibilities in a consideration of the meaning of the words "out of," but the principle so clearly re-stated in this case appears to be sound both in logic and in common justice.

"A Private Open Space."

A QUESTION was recently raised at a town-planning inquiry in a London suburb as to the exact meaning of the above phrase. Some doubt had arisen, and the local council were awaiting fresh instructions on the matter, presumably from the Ministry of Health. An objector urged that it was not the intention of the Whitehall authorities to dictate to landowners, or require them to keep certain places in permanence as a "camping-ground for cats." The importance of the matter arises from the duties cast on local authorities by the Town and Country Planning Act of last year. Section 11, one of the dominant sections, deals with schemes under the Act, which may include matters set forth in the Second Schedule. One of these is (cl. 3) "Open spaces, private and public." "Open space" is widely defined in the Open Spaces Act, 1906, s. 20, as land of which not more than one-twentieth is covered with buildings, the rest being laid out as a garden, or used for recreation, or lying waste or unoccupied. In s. 19 (4) of the Development and Road Improvement Funds Act, 1909, "open space" as used in that Act means land laid out as a public garden, or used for the purpose of public recreation, and any disused burial ground, a definition also contained in the Housing Act, 1925, s. 103, and in the Third Schedule, Pt. II, cl. 4 (iv), of the present Act. It is plainly inapplicable to land privately owned. In the Model Town Planning Clauses under s. 54 of the Housing and Town Planning Act, 1909, published by the Ministry of Health in 1923, cl. 35 defines "Private Open Space" as land reserved for use as a private ground for sports, play, rest, or recreation, or as an ornamental garden or pleasure ground. The point of preserving a private open space under the present Act is no doubt that it should serve as a "lung" for fully developed and thickly populated land adjacent or in the neighbourhood and for the purpose the last definition might be supplemented by adding an ornamental pond or lake. Land merely lying waste is not desirable in towns, and the Town Gardens Protection Act, 1863, was passed to give corporations of towns and cities power to deal with derelict squares, and, with the aid of a special rate, to convert them into gardens. The Act, however, did not apply to land over which an owner was not restrained from building, and if Londoners read *Tulk* v. *Metropolitan Board of Works* (1868), L.R. 3 Q.B. 682, they will see that they almost lost Leicester-square. The site was, however, bought for them by an ambitious company promoter, who thus sought to achieve social success and popularity. For a previous comment on this matter, see a Current Topic "Urban Authorities and Private Square Gardens" (77 SOL. J. 394).

Divorce Practice:

CO-RESPONDENT NOT ENTERING APPEARANCE: RIGHT TO ATTEND TAXATION OF COSTS.

THERE are many ways in which the practice on the Divorce side of the Probate, Divorce and Admiralty Division of the High Court differs from that in other divisions. None, however, is more startling than that which concerns the taxation of costs in a case where, the co-respondent to a divorce petition not entering an appearance and the suit being undefended, costs are awarded to the husband against the co-respondent. Present practice does not allow the co-respondent to be heard on the taxation of those costs which he has to pay.

Rule 84 of the Matrimonial Causes Rules, 1924, provides amongst other things that bills of costs are to be referred to the Registrar for taxation and filed in the Registry. Notice of the time appointed for taxation is then to be given by the Registrar to the "party filing the bill," who "shall give to the other party or parties to be heard on the taxation at least one clear day's notice of such appointment and shall at the same time or previously deliver to him or them a copy or copies of the bill to be taxed."

This rule is construed in the Registry as applying only to parties who have entered an appearance, although on the face of it there would appear to be no such limitation. Presumably a party to a suit remains a party, appearance or no appearance, since he or she is certainly within the jurisdiction of the court, which in the case of a co-respondent to a divorce suit may go so far as to award damages as well as costs against him. He must be taken to be "before the court," although in fact he has entered no appearance. Rule 34, indeed, states that a respondent, after entering an appearance, though without filing any answer, may be heard in respect of any question as to costs, but this rule, as we understand it, does not refer to taxation of costs but to questions arising at the hearing. In *Lyne* v. *Lyne and Blackney* (1867), L.R. 1 P. & D. 508, for example, the Judge Ordinary would not allow a co-respondent who had appeared but had filed no answer, to cross-examine the petitioner's witnesses or to address the jury on the question of damages. But after the damages had been assessed by the jury and a decree *nisi* pronounced, the co-respondent was allowed to address the court on the question of costs.

The practice under r. 84, however, is quite another matter. In the instance suggested the co-respondent has been ordered to pay the costs, and in common justice, one would have thought, should be allowed to be present at the taxation, whether he has appeared or not. The paying party should always have an opportunity of being heard as to what he should pay. Whether the practice referred to is of recent origin or not, or what the circumstances under which it arose, is difficult to imagine, but it was not the view formerly held by the divorce judges. In the case of *Letts* v. *Letts* (1869), 2 P. & D. 16, a suit for dissolution of marriage, the husband, having no defence, did not enter an appearance and a decree *nisi* was made against him. The Judge Ordinary said: "Although it may not be necessary for a man having no defence to enter an appearance to a petition, he may rightly claim to attend before the Registrar in order to object to his wife's bill of costs. Reason seems to be in favour of the application." Why should not a co-respondent be in the same position?

There is no question that on the common law and on the chancery sides of the Judicature the principle is clear that he who has to pay has a right to scrutinise his bill. In *R.* v. *Winder* [1900] 2 Q.B. 666, Mr. Justice Bigham said: "... the person who is ordered to pay should have an opportunity of coming before the taxing officer ... and of being heard as to what he should pay. He should have an opportunity, as all persons have who are ordered to pay costs, of making objection to the items which are charged against him. That right is in accordance with common sense and with justice." In bankruptcy, also, the principle is recognised: see *Re Smith, ex parte Wilson* [1910] 2 K.B. 346, where a fresh trustee having been appointed pending taxation, a re-taxation was ordered where he had not had an opportunity of attending. In a proper case even a bankrupt may be allowed to attend the taxation of the trustee's costs: *Re Geiger* (1914), 58 SOL. J. 757, and 1 K.B. 439.

The practice of the Divorce Registry on this point has not, so far as can be discovered, been put to the test of an appeal from the Registrar to the court. It would seem that a decision of the President upon it is more than overdue, and it is to be hoped that one may be given before long. Nothing is more to be deplored than the growth of arbitrary rules in departments of Courts of Justice, and practitioners are not usually slow to protest against them. In this instance, however, it may be imagined that the average co-respondent is only too glad to have the litigation terminated to appeal about what may be only a few pounds, shillings and pence. Yet it is not difficult to conceive the advantage which may be taken of the rule as at present construed. From all points of view it would appear that the limitation put upon it is wrong. It is submitted that it is an obvious injustice, to say the least, it is against well-accepted principles of our courts, and is open to grave abuse at the hands of those whose zeal for their clients' interests may outrun their sense of fair play.

The Crown and the Rent Restriction Acts.

CALCULATION OF RENT.

A NUMBER of cases have been decided on the question of the application of the Rent Restriction Acts to Crown properties, and it may be of interest to review them. Section 12 (2) of the 1920 Act limits the application of the Act to certain classes of dwelling-houses which are, incidentally, now altered by the new Rent and Mortgage Interest Restrictions (Amendment) Act. That section is in general terms, and does not mention the Crown. Accordingly, in *Clark* v. *Downes*, 145 L.T. 20, the Divisional Court held that the Acts must be so construed as not to interfere with the prerogative of the Crown and do not affect a dwelling-house of which the Crown is landlord. It was pointed out that if this were not so, s. 12 (10) of the 1920 Act, which makes certain dwelling-houses commandeered by the Crown nevertheless subject to the Act, would be unnecessary. Since the exemption is based on the prerogative, it is only Government Departments founded on the prerogative which can claim exemption. Thus in *Lord Advocate* v. *Barlow* (1924), Sc.L.T. (Sh. Ct.) Rep. 72, it was held that the Acts do not apply in the case of the War Department, while in *Prison Commissioners for Scotland* v. *Donaldson* (1922), Sc.L.T. (Sh. Ct.) Rep. 91, it was held that they do apply in the case of the Prison Commissioners, who do not derive their power from the prerogative.

The next question which arose was whether the exemption was continued where the Crown assigned to another landlord. Since *Barrett* v. *Hardy Brothers (Alnwick) Limited* [1925] 2 K.B. 220, it has always been considered that the Acts operate *in rem*, i.e., they affect the status of the dwelling-house. See also *Lloyd* v. *Cook* [1929] 1 K.B. 103, per Greer, L.J., at pp. 134-135, and *Clark* v. *Downes, supra*. In *Wirral Estates Limited* v. *Shaw* [1932] 2 K.B. 247, the Court of Appeal had to consider the case where the purchaser of a freehold from the Crown subject to a tenancy had determined that tenancy and created a new tenancy. The court held that the prerogative immunity of the Crown does not extend to such a case. The subsequent owner or owners of the reversion are in quite a different position. There is a new tenancy

and the status of the dwelling-house as between the parties is wholly altered. The judgment of Romer, L.J. in *Clark* v. *Downes, supra*, was misunderstood by the county court judge in *Wirral Estates Limited* v. *Shaw, supra*. As the Lord Justice pointed out in the latter case, in the former case there was only a sale by the Crown of the reversion upon an existing tenancy and not the creation of a new one. Where there is a new tenancy the prerogative immunity must cease to apply.

The most recent decision is that of the Divisional Court (Acton and Finlay, JJ.) in *Clark* v. *Mead* (1933), 49 T.L.R. 433. There the Crown had let a dwelling-house to the defendant in 1916 at a rent of 9s. 6d. per week. In October, 1928, the Crown assigned the property in the dwelling-house and in 1931 the assignees conveyed it to the plaintiff. In October, 1928, the rent was 7s. 3d. per week. In November, 1928, the assignees from the Crown determined the contractual tenancy and sought to increase the rent to an amount based on a standard rent of 9s. 6d. per week. The defendant objected to this, as he did when the plaintiff also sought to do so, contending that the standard rent was 7s. 3d. per week. The county court judge fixed the standard rent at 9s. 6d. per week, the rent at which the Crown first let the dwelling-house to the defendant in 1916. The defendant appealed.

The court allowed the appeal, feeling itself bound by *Wirral Estates Limited* v. *Shaw, supra*, and held that the letting by the Crown had no effect in fixing the standard rent. What was relevant was the rent payable when the premises were first controlled, i.e., when the tenancy granted by the Crown was determined. That was in November, 1928, when the rent was 7s. 3d. per week. The defendant-appellant argued an analogy from *Barrett* v. *Hardy Brothers (Alnwick) Limited, supra*, where the material date for fixing rateable value was held to be the date at which a dwelling-house was first created out of business premises (see per Bankes, L.J., [1925] 2 K.B., at p. 225, and per Scrutton, L.J., at pp. 227-228).

The respondent in *Clark* v. *Mead, supra*, argued that, the Acts operating *in rem*, the dwelling-house was *primâ facie* controlled by them, but that the landlord being the Crown, was not bound. The analogy with business premises was a false one, since they were in terms excluded from the scope of the Acts, whereas the Crown was only excluded by virtue of a common law rule. The court confessed to the attractions of this argument, but, being bound by authority, was constrained to decide otherwise.

Company Law and Practice.

Memorandum and Articles as One Document.

Last week I explained that I had endeavoured to choose a suitable holiday topic: this week I propose to deal with the case of *Angostura Bitters (Dr. J. G. B. Siegert & Sons) Limited* v. *Kerr* [1933] A.C. 550. The earlier part of the title may have a not entirely unfamiliar sound to one or two of my readers, but I fear that the subject of the case (a decision of the Judicial Committee of the Privy Council) is not of a particularly enlivening character, though of some interest to those who do not regard company law as the driest subject imaginable.

Before we can deal with this particular case, there is a certain amount of history which must be gone into: and we may start with the case of *Harrison* v. *Mexican Railway Co.*, 19 Eq. 358. In that case the memorandum of association declared that the capital of the company was £2,700,000, divided into 135,000 shares of £20 each, but was entirely silent as to what special rights and privileges, if any, any of the shares were to have. The articles, however, contained various statements which suggested, to put it no higher, preferential rights: thus, Article 8 provided that, for the consideration therein appearing, one Escarden should receive in perpetuity 4 per cent. of the net profits of the company in each year after payment of a dividend to the shareholders of 8 per cent. per annum. Then Article 39 gave the directors power, with the sanction of a special resolution, to increase the capital by the issue of new shares, such increase to be made in such manner, to such amount, and to be with and subject to such rules, regulations, privileges and conditions as the company in general meeting at the time of authorising the creation of the new shares should think fit.

The company created and proposed to issue certain new shares, to carry a dividend having priority over the original shares in the capital of the company; but a holder of original shares in the company objected to this, and sought an injunction to restrain the creation of the new preference shares. The argument on behalf of the disgruntled shareholder can be put quite shortly, and it amounts to this, that it was a fundamental part of the constitution of the company that the shareholders should participate equally in the profits, and that the creation of new shares entitled to a preference would be an interference with the constitution not allowed by law. Perhaps it is necessary to say a word or two on the statement that it was part of the company's constitution that the shareholders should participate equally in profits.

The two decisions in *Hutton* v. *Scarborough Cliff Hotel Co.*, 4 De G. J. & S. 672, and 2 Dr. & Sm. 521, lay it down that where the memorandum of association is silent as to the rights of shareholders there is an implied condition that all the shares must rank equally for purposes of dividend: the first decision relating to original capital of the company, which was, of course, expressly referred to in the memorandum, and the second to fresh capital which the company created so as to enable preference shares to be issued. The appropriate Acts have, of course, always prohibited the alteration of any of the conditions contained in the memorandum (the relevant section at this time being s. 12 of the Act of 1862), and Kindersley, V.-C., held, in the second of *The Scarborough Cliff Hotel Cases*, that this section prohibited alterations of the conditions of the memorandum, whether express or implied. The difficulty is now obvious: how can you, where you have a memorandum which implies that all shares are to be equal, issue shares with preferential or deferred rights?

The difficulty was got round by Sir George Jessel, M.R., in *Harrison* v. *Mexican Railway Co.*, by treating the original memorandum and articles of association together as showing what the original contract was, and then holding that, if the original articles of association show that the original contract was not such as to confer eternal equality, no implication of equality arises from the memorandum of association. It follows from this (and this is the importance of this case from the point of view of the *Angostura Bitters Case*) that the memorandum cannot be looked upon as being for this purpose of any greater efficacy than the articles, or as being in any way dominant, but that memorandum and articles must be read together. Thus, in the *Mexican Railway Case*, Sir George Jessel, after a careful examination of the articles, decided that it fairly and clearly appeared from them that there was no limit to the power of the company to issue new shares with a preference dividend. It therefore followed, by reading both memorandum and articles together, and applying the principle referred to above, that the company had power to create and issue preference shares.

From this case we may turn to one which seems to have more affinity with the case to which I first referred in this article, and that is *Re South Durham Brewery Co.*, 31 Ch. D. 261, which is interesting in that Kay, J., was unable to reconcile *Harrison* v. *Mexican Railway Co.* with his own view of the law, but was reversed by the Court of Appeal, which followed this last case. In the *South Durham Case* the memorandum stated that the capital of the company was £10,000, divided into 1,000 shares of £10 each, with power to increase the capital. The articles in this case went much further than the articles

in *The Mexican Railway Co.'s Case*, for they provided for an increase of capital, and went on to say that any new shares might be issued either with or without special privileges and priorities over the original shares, and with such amount credited as paid up thereon as the company might determine, and the capital represented by such new shares should be considered as a part of the general capital of the company. Perhaps it should be added that these were part of the original articles of the company, registered along with the memorandum. The company went into compulsory liquidation, but that is an immaterial factor for this present purpose, except that out of the liquidation arose a scheme for the resuscitation of the company, which involved an increase of the capital of the company by the issue of preference shares, and a stay of the winding up proceedings.

Kay, J., refused to sanction the scheme; he refers in his judgment to the fact that *Ashbury Railway Carriage & Iron Co.* v. *Riche* had been decided in the House of Lords since Sir George Jessel's *Mexican Railway* decision, and though he says that case was not new law, it was the most clear and emphatic expression of the law as to the special functions of the memorandum of association that had been given; he then declines to follow Sir George Jessel's decision, saying that he could not reconcile it with the propositions that the memorandum provides for equality of the shares and that that is a fundamental condition not capable of being altered by the articles, for which propositions he quotes *Hutton* v. *Scarborough Cliff Hotel Co.*, *supra*, *Ashbury* v. *Watson*, 30 Ch. D. 376, and *Ashbury Railway Carriage & Iron Co.* v. *Riche*, *supra*.

The Court of Appeal reversed this decision, and sanctioned the scheme, and I think I only need refer to a passage from the judgment of Lindley, L.J., to put the matter in its true perspective: "The difficulty felt by Mr. Justice Kay," says Lindley, L.J., at p. 270, " . . . appears to have rested on the view that the memorandum impliedly provides that the capital shall be all of one kind, that is, that as far as the shareholders were concerned there was to be equality *inter se*; and he thought that that conclusion was forced upon him by the observations of Lord Westbury in *Hutton* v. *Scarborough Cliff Hotel Co.* But they are, I think, properly explained by Cotton, L.J., in *Guinness* v. *Land Corporation of Ireland*, 22 Ch. D. 377, where he says that the equality of the shareholders as regards dividends arises not by implication from the construction of the memorandum, but by the implication which the law raises as between partners, unless their contract has provided the contrary. I do not see anything in the memorandum inconsistent with the company reserving to itself power to increase its capital by the issue of new shares on more advantageous terms." It certainly seems to the writer that this explanation is a somewhat difficult one, to put it no higher; and it is perhaps not unfair to suggest that the desirability of avoiding the logical result of the *Scarborough Cliff Hotel Co.'s Case* has led to some rather nice distinctions. To what extent the *South Durham Case* is an authority for the proposition that memorandum and articles rank, as it were, *pari passu* for some purposes, is doubtful, but it does at least confirm the result of *Harrison* v. *Mexican Railway Co.* In passing, it may be mentioned, though it does not concern us here, that since *Andrews* v. *Gas Meter Co.* [1897] 1 Ch. 361, the second decision in *Hutton* v. *Scarborough Cliff Hotel Co.* (that of Kindersley, V.-C.) is not law, and, indeed, Rigby, L.J., there says in effect that *Harrison* v. *Mexican Railway Co.* overruled it.

Now for the *Angostura Bitters Case*. The company was incorporated under a Companies Ordinance of Trinidad and Tobago, but nothing turned on this, for the principles of English company law are applicable. The memorandum provided that, after payment of a preference dividend, 10 per cent. of each year's profits were to be set aside and accumulated as a reserve fund until it amounted to £50,000 invested outside the business. The memorandum conferred a preference as to capital on the preference shares, but said nothing as to the purposes for which the reserve fund, which the company was thereby compelled to create, were to be used, but the articles provided that the directors might set aside out of the profits of the company (in addition to the sums provided under the memorandum as a reserve fund) such sums as they thought proper as a reserve fund to meet contingencies, for special dividends or for repairing, improving and maintaining any of the company's property, and for such other purposes as the directors should in their absolute discretion think conducive to the interests of the company. The article then went on to provide that the reserve fund to be set aside under the memorandum should be kept invested outside the business until required for any of the above purposes.

The Chief Justice of Trinidad and Tobago found that the reserve to be created under the memorandum was for the benefit and protection of the respondents, and that it could not be applied in manner provided by the article to which reference has been made. Truly a surprising decision, and almost as surprising is the fact that the Privy Council upheld it. The Privy Council took the view that there was no ambiguity in the memorandum or any gap that needed filling up, and therefore the articles could not explain or qualify the memorandum. It was argued for the appellants that, on the authority of the cases referred to above, memorandum and articles must be read together. But no; notwithstanding the plain words of the article as to the application of the reserve created under the memorandum, the Privy Council decided that it was *ultra vires* (presumably *ultra vires* the company, though the report suggests *ultra vires* the directors) to use the memorandum reserve in the manner which the articles provide. Comment seems useless.

A Conveyancer's Diary.

Gifts partly Onerous and partly Beneficial.

Not long ago I had to consider the question as to the right of a legatee of various leasehold and pure personalty to disclaim the gift of leaseholds which were onerous and to accept the other gifts.

In the case I have in mind the will was complicated and difficult points of construction arose.

A consideration of the authorities on the subject will, I think, be of interest. I cannot pretend to deal with all the cases, but I may mention some of the most important which indicate the general principles involved and the application of those principles in particular cases.

In *Guthrie* v. *Walrond* (1883), 22 Ch. D. 373, a testator resident in England at the time of his death bequeathed to his son "all my estate and effects in the island of Mauritius absolutely."

There were several questions raised, but that with which I am concerned was whether the legatee was entitled to disclaim as to certain onerous leasehold property in the island and to accept the gift of the remainder of the property.

Fry, J., in his judgment upon this point said: "It appears to me plain that when two distinct legacies or gifts are made by a will to one person, he is, as a general rule, entitled to take one and disclaim the other, but that his right to do so may be rebutted if there is anything in the will to show that it was the testator's intention that that option should not exist. For there are cases in which the court has held that a legatee has no right to take one gift and leave another, because it has discovered an intention on the part of the testator to couple the two gifts together. But in the present case the question arises upon a single and undivided gift, and it appears to me that such a gift is *primâ facie* evidence that it was the testator's intention that the gift shall be one and

that the legatee shall either take it all or take none of it. It may be that, even in such a case, the court would sometimes be able to discover some subtle indication of an intention that the legatee shall be at liberty to take part of the gift and leave the rest, but I think that *primâ facie* the fact that there is only one gift is an indication that the legatee shall take either the whole or none at all."

That has been accepted as a correct statement of the general rule. It is, of course, in the application of it that difficulties arise.

In *Re Hotchkeys* (1886), 32 Ch. D. 408, a testatrix gave "all my real and personal estate" to trustees "upon trust at their discretion to sell all such parts thereof as shall not consist of money" and out of the produce to pay her debts and funeral and testamentary expenses and invest the residue "and shall stand possessed of such real and personal estate moneys and securities" upon trust "to pay the rents interest and dividends and annual produce thereof" to T during her life, with a clause of forfeiture on alienation, and after the decease of T the testatrix devised and bequeathed "my said real and personal estate and the securities upon which the same may be invested unto and to the use of V.C. his heirs executors administrators and assigns for ever according to the nature and quality thereof respectively." Part of the residuary estate of the testatrix consisted of a remainder in fee which fell in after her death. The property was subject to mortgages created by former owners and was out of repair and its income was only sufficient to pay the interest on the mortgages.

The tenant for life contended that she was entitled to disclaim the property, the income of which was insufficient to pay both the mortgage interest and provide for necessary repairs.

The Court of Appeal held that she was not entitled to do so.

Cotton, L.J., after referring to earlier authorities, said: ". . . here what is given to the tenant for life and to the remainderman is an aggregate and what results from that aggregate is given to both of them. In my opinion, under those circumstances if the tenant for life likes to accept the gift and likes to accept it by entering into possession of part of the property, he cannot say I will take possession of this and take it with this obligation thus thrown upon me but at the same time I will reject another part of that one integral gift which is given to me by the testatrix."

These cases were followed in *Frewen* v. *Law Life Assurance Society* [1896] 2 Ch. 511, and *Re Baron Kensington* [1901] 1 Ch. 203.

It must, however, be borne in mind that the question is one of construction, and authorities, whilst useful as a guide, are not conclusive.

I may mention now a few of the cases where it has been held that there were separate gifts and the legatee could take one and disclaim another.

In *Andrew* v. *Trinity Hall Cambridge* (1804), 9 Ves. 525, a complicated case with the facts of which I need not deal here, Sir W. Grant, M.R., said (at p. 534): "Suppose a bequest to me of a house to live in it and afterwards in the same will a bequest of £100; and I find it inconvenient to live in the house; there is an intention of benefit to me, intending to give me more than I find it convenient to accept of; but that shall not deprive me of the other benefit."

In *Long* v. *Kent* (1865), 12 L.T. 794, a testator by his will bequeathed to three of his daughters £1,000 each. Subsequently by codicil he bequeathed certain shares amongst all his children and the children of a deceased daughter providing that all calls thereon should be paid by his children in equal shares according to their respective estates and interests therein. One of the daughters declined to accept any of the shares.

It was held that the daughter was entitled to disclaim the shares which had a liability upon them, and yet to be paid her legacy of £1,000, the two gifts being distinct.

Warren v. *Rudall* (1860), 1 J. & H. 1, was a case where a testator bequeathed a legacy to A and devised freeholds to A and his wife for their lives, with remainders over, and after several intervening gifts bequeathed leasehold premises to A.

Sir W. Page Wood, V.-C., held that A was entitled to repudiate the bequest of leaseholds and accept the legacy and life interest in the freeholds.

His lordship said: "If I saw here any intention to couple the gift of the life interest in the freehold with the gift of the leasehold, so as to make the acceptance of the burden a condition of the benefit, the case would be different. But the testator's intention seems to me to have been exactly the contrary. In each gift his meaning was to bestow a bounty, not to impose a burden."

Another case in which it was held that there were distinct gifts is *Syrer* v. *Gladstone* (1885), 30 Ch.D. 614; [1902] 1 Ch. 211.

The last case to which I propose to refer is *Re Loom, Fulford* v. *Reversionary Interest Society, Limited.*

The facts were that a testator bequeathed a leasehold house to Marion Ross for life, she paying the rent and performing the covenants of the lease; he also bequeathed to her the dividends of certain stocks for life. By the lease the testator had covenanted to keep the house in repair. Marion Ross accepted the legacies and mortgaged her interest under the will to the defendant society in one mortgage. The society obtained an order for foreclosure but did not take possession of the house. Marion Ross became a pauper lunatic. The trustees of the will paid the fire insurance premiums on the house and the rent out of the dividends of the stock, and handed over the balance to the society. The lessor claimed possession of the house on the ground of breach of the covenant to repair. The society disclaimed all interest in the house and declined to do the repairs although they claimed to be entitled to the dividends on the stocks.

It was held that in accepting the legacies Marian Ross became personally liable to perform the covenants of the lease; that the Society had done nothing to make themselves liable to do the repairs; that the gifts in the will were independent; and that the society were entitled to retain the dividends on the stocks without being liable under the covenants in the lease.

It seems therefore that when the gifts are independent, an assignee from the legatee may disclaim the onerous part, unless he has himself done something to accept the burden, as by taking possession of onerous leaseholds.

On the other hand if the gift is an aggregate one, an assignee must accept the burden of the onerous part as the legatee himself was bound to do (see *Frewen* v. *Law Life Assurance Society, ubi supra*).

Landlord and Tenant Notebook.

New Grounds for Possession of Controlled Premises: 2. Sub-letting at Excessive Rent.

This new ground for possession has a section to itself, s. 4. It has undoubtedly been added to meet the complaint of landlords who have had the mortification of seeing their protected tenants making a profit out of the Act and out of sub-tenants too ignorant or too apathetic to assert their rights.

The marginal note runs: "Prevention of excessive charges for sub-let parts of dwelling-houses," but marginal notes are not usually considered part of a statute, and the enactment which will be of most interest is that contained in the first sub-section, entitling the court to make an order for possession if it is satisfied that the rent charged after the passing of the Act for any sub-let part which is also a dwelling-house to which the principal Acts apply was (*sic*) in excess of the recoverable rent of that part. This provision, like all other provisions

for possession, is qualified by "where the court considers it reasonable," the effect of which phrase I discussed last week.

The test is *primâ facie* a simple one. There is to be no arguing as to reasonable profits, as in the old days of furnished lettings under s. 9 of the 1920 Act (see *Truss* v. *Olivier* (1924), 40 T.L.R. 588). All the court has to do is to find out what is the recoverable rent.

Now recoverable rent is the maximum rent recoverable under the provisions of the principal Acts (s. 16 (1)), and depends, therefore, in the first place on the standard rent of the part sub-let.

And as this may not have been ascertained by apportionment—and indeed, in most cases in which this new provision is invoked the chances are that it has not, for if it had it was probably ascertained at the instance of the sub-tenant with a view to avoiding paying more than was due—the next sub-section directs the court to apportion the standard rent or determine the recoverable rent if necessary. Possibly, in view of s. 12 (3) of the 1920 Act, this provision is superfluous; but it will prevent litigation in which the landlord might invoke *R.* v. *Marylebone County Court Judge* [1923] 1 K.B. 365, and the tenant *Broomhall* v. *Property Agents and Owners Ltd.* [1932] 1 K.B. 31. The latter decided that a tenant could not ask the court to determine his standard rent merely because there was a dispute as to parcels, and consequently as to whether the 1914 rent of a lease which had expired or the 1920 rent of a lease since granted was the decisive factor; the former case, distinguishing this authority, laid it down that whenever apportionment was necessary in order to settle the amount of rent, the county court must, though no other claim was made, fix the apportioned rent. In proceedings for possession on the profiteering ground, then the landlord, though not a party to the sub-tenancy, will have a right to have the recoverable rent determined.

This will in many cases involve calling the sub-tenant as a witness, and it may be necessary to make it clear to him that, by virtue of s. 5 (5) and s. 15 (3) of the 1920 Act, the order for possession will not affect him. In some cases the provisions of s. 6 of the new Act, which make circumstantial evidence admissible, may prove useful.

The qualifying words "is also a dwelling-house to which the principal Acts apply" are of some importance; the new provision is not designed to help landlords who could put an end to the profiteering under the existing law, as expounded in *Barrell* v. *Fordree* [1932] A.C. 676. Thus, if the sub-let part be sub-let furnished, or used as business premises, the superior landlord is entitled to possession of that part, but not of the part retained by the mesne tenant.

The two last sub-sections create a new civil obligation and two new criminal offences. A tenant who charges more than the recoverable rent *after* apportionment or determination by the county court is liable to a maximum fine of £100, unless he proves either two things or one thing, namely, either that he did not know and could not by reasonable inquiry have ascertained that the rent was in excess, or that the excess was *solely* due to accidental miscalculation. The burden of proving these defences is on the tenant and will not be easily discharged. Ignorance may perhaps be proved in cases in which a widow has become tenant under s. 12 (1) (*g*) of the 1920 Act. Accidental miscalculation may be established when the term of a tenancy is changed.

Lastly, a duty is imposed on a sub-letting tenant of supplying the landlord with written particulars, including rent, of "occupancy." I am not quite sure what this means (though the word was used in s. 7 (2) of the 1923 Act); presumably a statement of the premises, the term and the rent will suffice. (There is no provision in the Acts for cases, which may well occur in sub-tenancies, in which the rent consists partly of services.) These particulars must now be supplied in writing by 18th October if the premises were sub-let on 18th July, otherwise within two weeks after the sub-letting—which, I take it, means the commencement of the term. The maximum penalty for failure without reasonable excuse, or for making a statement false in any material particular, is £10; under s. 7 (2) of the 1923 Act, which provided for a statement to be made on the landlord's demand, the penalty was a fine not exceeding £2.

Our County Court Letter.

THE RESPONSIBILITIES OF GARAGE PROPRIETORS.

(*Continued from* 77 Sol. J. 60.)

The scope of the authority of an agent was considered in the recent case of *Johnson* v. *Rea* at Birmingham County Court, in which the claim was for £11 0s. 6d. for goods supplied and services rendered. The plaintiff's case was that (1) in November, 1932, one of his customers (a Mr. Taylor) instructed him to book certain items for petrol, oil, towing, etc., to Beaumont Motors, viz., the name under which the defendant traded at Cheltenham; (2) the November account was duly rendered to the defendant, who did not reply; (3) the plaintiff therefore gave further credit to Taylor until the end of December, when Taylor's employment with the defendant terminated; (4) the plaintiff rendered a further account early in January, but no notice was taken, and he therefore rang up the defendant in March; (5) the only query then raised was as to the amount, there being no repudiation of Taylor's authority. The defence was that (*a*) Taylor had no authority to pledge the defendant's credit, except on one occasion; (*b*) liability was therefore only admitted for one group of items, in respect of which £2 16s. 6d. was paid into court. The evidence of Taylor (who was called by the plaintiff) was that he was expressly authorised to open a monthly account, but this was denied by the defendant's manager. His Honour Judge Dyer, K.C., held that (1) the plaintiff had not discharged the onus of proof, with regard to the express authority of Taylor; (2) the latter nevertheless had implied authority to pledge the defendant's credit, as he had been appointed sales representative for the Birmingham district (about 50 miles away from the defendant's show-room) and therefore required some means of obtaining supplies—during prolonged absences on the defendant's business. Judgment was therefore given for the plaintiff for £8 4s., in addition to the amount paid into court, with costs on scale A.

HOUSE PURCHASE BY INSTALMENTS.

The above subject was recently considered at West Hartlepool County Court in *Moore* v. *Brown*, in which the claim was for a conveyance of 15, Park-street, or alternatively £122 8s. 10d., being additional rent, rates and cost of repairs overpaid. The plaintiff's case was that (1) prior to August, 1920, her rent was 4s. 6d. a week, the defendant paying rates and the cost of repairs, (2) the defendant then proposed that (*a*) the rent should be 4s., but that the plaintiff should pay an additional 1s. a week, and also the rates and the cost of repairs for twelve years, (*b*) thereupon the house should become the plaintiff's property, (3) the plaintiff's son duly asked for the deeds, but these were not handed over. The defendant admitted that part of the agreement set out in 2 (*a*) *supra*, but contended that (at the end of twelve years) the tenant was to become owner for life only—no mention having been made of handing over the deeds. His Honour Judge Richardson observed that (1) if there had been a misunderstanding, the defendant would have interviewed the plaintiff as soon as her son applied for the deeds, (2) the defendant must have made a large profit. Judgment was given for the plaintiff, with costs, an order being made for the conveyance of the house to her. In default of compliance by the defendant, a vesting order may be made under the Trustee Act, 1925, s. 44 (vi).

Correspondence.

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL.]

Remuneration of the Solicitor Trustee.

Sir,—The recent decision of Mr. Justice Clauson in *Re Gates*, 175 L.T.J. 477, raises once again the solicitors' grievance that when invited to act as trustee he must do the work and accept the responsibility gratuitously unless the instrument contains an express power to charge.

Another grievance arises from the decisions in *Clarkson* v. *Robinson*, 83 L.T.R. 164, and in *Re Chalinder and Herington*, 96 L.T.R. 196, where it was held that even in cases where the instrument authorises the solicitor to charge for the time devoted by him to the trust, he is not entitled to charge for time devoted by him for work which, although necessary, is not done strictly in his professional capacity.

In these days when solicitors have the greatest difficulty not only in earning reasonable remuneration for their work but even in meeting very heavy and always increasing expenses of maintaining their office establishments, these cases give rise to very real injustice.

A solicitor is usually chosen as trustee because he is of all professionals the best qualified to administer a trust. What justice then is there in requiring him to do the work for nothing?

When the Public Trustee Act, 1906, was passed, express provision was made (s. 9), whether the instrument under which the Public Trustee should be appointed contained a charging clause or not, that the Public Trustee should be allowed to charge according to the scale provided by the Act.

In most cases the omission in a trust instrument of a power to a professional trustee to charge for his work is an oversight, as surely no testator or settlor wishes or expects a professional trustee to do his work for nothing, especially in these days where so large a proportion of charges is absorbed by office overheads.

Is it therefore too much to hope that legislation may be introduced to place the professional trustee in the same position as the Public Trustee?

Regis House, CHARLES L. NORDON.
King William-street, E.C.4.
27th July.

The Bible on the Bench.

Sir,—In your always interesting column "In Lighter Vein" under the heading "The Bible on the Bench," reference is made to the words of "a venerable patriarch" who was complaining of a minor assault and who responded to an attempt at settlement of the case on the footing of the Psalmist's exhortation as to brethren dwelling in unity by observing that "the Law says an eye for an eye and a tooth for a tooth." However venerable the patriarch may have appeared, if he accepted the literal interpretation of the words of the Pentateuch as they stand he disclosed scant knowledge of Jewish Law. A Gentile student of the Jewish Law like John Selden regarded the Jewish traditional interpretation of the text as so fundamental that he referred to it in his "Table Talk" under the heading Retaliation, where at fo. 68 he writes as follows (I quote from the edition of Sir Frederick Pollock, at page 122):—

> "An eye for an eye and a tooth for a tooth that does not meane that if I putt out another man's eye, therefore I must loose one of my owne (for what is hee the better for that? tho' this bee comonly received) but it meanes that I shall give him whatt satisfaccon an eye shall be judged to bee worth."

The Rabbinical exposition of the text is well set forth in the chapter on Jurisprudence in "Everyman's Talmud" by the Rev. Dr. A. Cohen, where a passage from the Talmud is cited which puts the question: "Supposing a blind man had knocked out an eye of another or a man with an amputated arm had cut off the arm of another or a lame man had made another lame, how can I fulfil in this case eye for eye?" The quotation proceeds to cite the passage in Leviticus, which declares: "Ye shall have one manner of Law" and the Talmudical gloss thereon to the effect that that means a law which shall be the same for all. A footnote in "Everyman's Talmud" adds that "since the literal interpretation of eye for eye as shown cannot be always justly applied, the words must bear another interpretation which would be universally applicable namely compensation in money."

BERTRAM B. BENAS.

Harrington-street, Liverpool.
24th July.

[We are much indebted to our learned correspondent for his profound exposition which we hope will reach the eye of the magistrate whose attempt at settlement was frustrated, and by him be filed for use on a similar occasion.—*Ed.*, SOL J.]

A Reader's Query.

Sir,—Can any of your readers enlighten us as to the correct mode to adopt in the following circumstances?

After a thorough search we find ourselves unable to lay our hands on a pass book and certain shares of a building society belonging to a deceased's estate we are getting in following probate lately obtained. As the society's manager, on being informed of the circumstances, states that nothing can be done until the same are produced, although we have suggested that a statutory declaration by a member of our firm as to such search could and would be made. We are under the impression that the manager's standpoint is inaccurate, but we shall be much obliged if the correct method binding on the said Society could be indicated to us so that the matter could be dealt with, and the shares, if desired, sold, if the said certificates and pass books do not promptly come to hand.

London. LONDON SOLICITORS.
19th July.

Solicitors Act, 1933.

Sir,—The cash book ruling suggested by "Consulting Accountant" is useless in that it only shows the balance on all clients' accounts; it is necessary to know the balance of each client's account, or at least the total of all clients' accounts in credit. To comply with the rules it would seem to be necessary either—

(1) to have separate cash columns for each client, which is impossible; or

(2) to have a separate bank account for each client, which is likewise impracticable; or

(3) never to make a payment, however small, without first being placed in funds; or

(4) to analyse the client's account from the commencement in order to ascertain how much of that client's money is in the client's account on the occasion of each transaction.

Practical experience of accounts has convinced me that an honourable solicitor honestly trying to act properly may get his accounts into serious confusion owing to the rules, and that his honest attempts to correct them may only add to this confusion. Some solicitors understand accounts; most do not.

EXPERIENCED.

7th August.

Mr. William Augustus George Davidson, solicitor, of Sheringham, left £18,893, with net personalty £14,235.

In Lighter Vein.

THE WEEK'S ANNIVERSARY.

The memory of Vice-Chancellor Parker has completely faded from the Court of Chancery, though as a judge he showed himself patient in hearing, careful in deciding and courteous to all, while his judgments gave general satisfaction. He was one of those talented young Scotsmen who choose the conquest of England as a career, for he was born in Glasgow. He was called to the Bar at Lincoln's Inn in 1829, took silk in 1844 and stood unsuccessfully for Leicester as a Conservative in 1847. Though both his Radical opponents were subsequently unseated for bribery, he did not offer himself for re-election. His political attachments did not prevent the Liberals from appointing him Vice-Chancellor in October, 1851, in place of Lord Cranworth, who went to the Court of Appeal. Only ten months later, on the 13th August, 1852, he died suddenly of angina pectoris at Rothley Temple, in Leicestershire, and was buried there. "He afforded such evidence of intellectual power, promising a most brilliant judicial career that his sudden death was almost as great a grief to the legal world as it must necessarily have been to his family and private friends." He was only forty-eight when he died.

POMP AND LUXURY.

The gratifying degree of comfort which attends His Majesty's judges of assize is pleasingly illustrated by the only complaint recorded in the visitors' book of the judges' lodging at Liverpool by Macnaghten and Atkinson, JJ. They wrote: "We have much appreciated the lawn tennis court and the care given to it. We find the staff excellent, but may we suggest softer pillows?" It is understood that the next learned heads that come to hear and determine the disputes of Liverpool will rest in down. This was not the spirit of the old circuits which generally provided more pomp than luxury, to judge by the remarks which Mr. Justice Hawkins once addressed to the Grand Jury at Aylesbury: "My rest, gentlemen, has been rudely disturbed by the lodgings assigned to me. My bedroom was hardly accessible on account of what appeared to be a dense fog which was difficult to struggle through. I sought refuge in the dressing-room. Being a bitterly cold night and a very draughty room, someone had lighted a fire in it, but unfortunately all the smoke came down the chimney after going a little way up, bringing down as much soot as it could manage to lay hold of. My marshal was the subject of equal discomfort and I congratulate you, gentlemen, on the fact that you are not holding an inquest on our bodies."

RELIGION AND SUCCESS.

The end of July usually sees a certain number of eminent lawyers among the notabilities who dispense rewards and good advice at school speech days. This year Lord Hanworth, M.R., has told the boys of Stratford-on-Avon not to be afraid of religion, while Mr. Justice Roche warned his young listeners at Dover College not to be ashamed of success. For such of the younger generation as are attracted to the law, the former injunction will probably call for more emphasis than the latter. In his profession, the late Lord Birkenhead's philosophy of the glittering prizes is sufficiently widely accepted and self-effacement is not a recognised virtue, whatever may be the opinion elsewhere. One recalls the story of the old lady who once asked: "Who is this Effie Smith? I don't think she can be a modest girl to be talked about so much." Certainly it would be a much more onerous task to number the ambitious lawyers than the conspicuously religious. Few chief justices have sung in the choir like Lord Alverstone. Few judges would walk away from church on Palm Sunday bearing a palm as big as themselves, as did Mr. Justice Day.

Reviews.

The Rent Acts, 1920 *to* 1933. by H. HEATHCOTE-WILLIAMS, M.A., of the Inner Temple, and of the Western Circuit, Barrister-at-Law. 1933. Demy 8vo. pp. xlvii and (with Index) 238. London: The Property Owners' Protection Association. 6s. net.

Those who have dealings with this remarkable legislation will find in Mr. Heathcote-Williams' work a useful statement of the whole of the law in logical and concise form. By not following the usual method of discussing the various enactments section by section, but stating their effect on the rights and duties of parties to a tenancy at the various stages of a tenancy, the author has earned the gratitude of all practitioners able to use an index. The form adopted enables proper prominence to be given to those parts of the Housing Act, 1930, which override part of the Rent Act legislation, an indignity to which the latter is, of course, quite unaccustomed. The references to authorities are perhaps fewer than usual, but are all very much to the point; be it remembered that those who concern themselves with the interpretation of statutes have observed a tendency on the part of tribunals to ignore as much as possible, or to distinguish as readily as possible, decisions of other tribunals. I should perhaps mention that the Acts themselves, as well as the relevant Orders of Court, are duly set out in Appendices; but the way in which their effect is discussed is the chief attraction of the book, and may make it a work of interest to students of social history when it has ceased to interest lawyers.

Notable British Trials. Jack Sheppard. By HORACE BLEACKLEY, M.A., F.S.A., and S. M. ELLIS. 1933. Demy 8vo. pp. xiv and (with Index) 260. Edinburgh and London: William Hodge & Company, Ltd. 10s. 6d. net.

It is hard to see how Jack Sheppard found his way into the Notable British Trials series, for his trial is the least important thing about him. Not more than half a dozen pages are devoted to his appearances in court, including the occasion when he was summoned to the Chancery Bar to be exhibited as a curiosity before Lord Chancellor Macclesfield. It would, however, be ungracious to criticise the plant because of the pot it grew in, and here is a work, both erudite and entertaining, which must surely be the last word on its subject, bringing him to life again and in a sense vindicating his character. Disentangled from the jungle of legend and hearsay that grew up around him after his death, making him a master desperado, he stands discovered as a rather commonplace young thief with a record of barely a dozen thefts and burglaries in a brief criminal career of twelve months. Actually, his whole fame rests on his two escapes from Newgate Gaol, both remarkable, but the second so extraordinary as to rank him with Casanova as a prison-breaker. The astonishing details of this exploit show him to have been a rare combination of "handcuff king," "strong man," and "cracker of cribs." A great part of the book is devoted to a review of the literature and drama which celebrated, exploited and exaggerated his achievements. It is interesting to learn that he was a contributory inspiration in the conception of "The Beggar's Opera." Every aspect of the subject is fully dealt with, and it is surprising to find a work at once so learned and so readable.

Books Received.

Tolley's Complete Income Tax Chart. Eighteenth Edition, 1933. By CHAS. H. TOLLEY, A.C.I.S., F.A.A., Accountant. London: Waterlow & Sons, Ltd. 3s. 6d., post free.

Rent and Mortgage Interest Restrictions. Fifteenth Edition, 1933. By the Editors of *Law Notes*. Demy 8vo. pp. xxiv and (with Index) 273. London: "Law Notes" Publishing Offices. 7s. net. Cloth covers, 8s. 6d. net.

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, is responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29-31, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Will—Settlement—Cesser of Settlement on Death of Life Tenant—Will of Testator not proved until after the Death of Life Tenant—Sale.

Q. 2781. With reference to *Q.* 2739 in your issue of the 20th May, 1933, p. 354, is it not necessary to consider s. 36 (12) of the A. of E.A., which provides that the section applies to assents made after the commencement of the Act? The effect is, I submit, that sub-s. (6) only protects a purchaser against assents made after the Act, and he must obtain other evidence to show that an assent had not been made before the Act.

A. The difficulty is appreciated. It is to be observed that A. of E.A., 1925, s. 36 (12), makes the whole of s. 36 applicable to all post-1925 conveyances. It would, therefore, appear to follow that a post-1925 conveyance by a personal representative of a legal estate to a purchaser accepted on the faith of a recital of non-assent will operate to transfer or create the appropriate legal estate in like manner as if *no* previous assent or conveyance had been made by the personal representative: s. 36, sub-s. (6). There is nothing in sub-s. (12) of s. 36 to restrict such previous assents to post-1925 assents. All that that sub-section states is that the whole section applies to assents and conveyances made post-1925, no matter when the material death occurred. There is thus much to be said for the view that a post-1925 purchaser is protected from pre-1926 assents, though the question is admittedly open to doubt. (See "Everyday Points in Practice," Pt. VIII, Section 7, Case 5, at p. 418.)

In the particular circumstances, the fact that the will was not proved until after the death of the life tenant, the probability of an implied assent in her favour is very remote, and the more so in view of the mortgage.

Priority of Receiver.

Q. 2782. X, Ltd., a limited company, on June 29th, 1931, gave a legal charge of a certain house to A for £600 and interest at 5 per cent. This charge was registered in accordance with s. 79 of the Companies Act, 1929. In an action heard on 7th April, 1933, R was appointed receiver and manager of the Company on behalf of the debenture-holders (new series) and on 11th April, 1933, he gave notice to A of this fact, and that the assets secured under the debenture deed include a second charge on the house. Please explain briefly the effect of this on A's rights, (*a*) to call in the debt; (*b*) to sell; (*c*) to appoint a receiver; and (*d*) generally. I understand that *Re Metropolitan Amalgamated Estates, Ltd.* [1912] 2 Ch. 497, establishes that a receiver appointed by the court in favour of a second mortgagee has priority over a receiver appointed by a first mortgagee in exercise of his statutory power; it seems, then, that by analogy, A's right of sale is so subordinated, and therefore in giving notice to R calling in the principal and interest, it would be improper and ineffectual to insert the usual declaration of intention to exercise the power of sale.

A. The effect of *In re Metropolitan Amalgamated Estates, Ltd.* [1912] 2 Ch. 497, is too widely stated in the question, as that decision was merely to the effect that the receiver for debenture-holders was entitled to keep the rents (collected by him) between the date of his appointment and the date of an application to the court by the first mortgagees for an order that they be at liberty to take possession. In the present case, the effect of the appointment of R on A's rights is as follows: (*a*) A can still call in the debt; (*b*) A can still sell; (*c*) A is entitled to apply to the court *pro interesse suo* for an order for possession, i.e., that R give up possession to A's receiver, that he may account to A for the rents and profits received, and also that R should hand over the tenancy agreement, if not already in A's possession. The order to account may not be granted, as (if the house is on a quarterly tenancy) R will not have received any rent; (*d*) generally, the right of sale is not subordinated, by analogy to the right to appoint a receiver, and R will probably agree to give vacant possession to a purchaser. There would therefore be nothing improper and ineffectual in inserting a declaration of intention to exercise the power of sale.

Divorce—Settlement—Variation.

Q. 2783. By a marriage settlement a woman settled funds to which she was entitled in reversion on herself for her life, subject thereto to her husband for his life, and after his death to any children there might be. In the event of there being no children half the funds were to be held for some cousins absolutely and the other half as the wife might appoint. The marriage has been dissolved owing to the husband's adultery and there are no children. The court struck the husband's name out of the settlement, but otherwise left it unaltered. The woman now wishes to marry again. Are we right in supposing that the court would not allow her second husband's name to be inserted in the settlement, and that any children of the second marriage would be prevented from taking under the settlement except so far as the woman's power of appointing is operative? Or would the court allow the settlement to be altered so as to enable any children of the second marriage to take before the cousins? So far the funds have not fallen into possession.

A. We think that our subscriber's view of the position is correct. An order (as here) having been once made will not be varied on the ground of a change of circumstances since the date of the order: *Bennyon* v. *Bennyon*, 15 P.D. 29. Further, the court would not in any event make an order which would prejudice the cousins without their consent: *Webb* v. *Webb* [1929] P. 159. Broadly speaking, the power of variation is intended for the benefit of the spouses and children only: *Thomson* v. *Thomson* [1896] P. 263.

Enfranchised Copyholds—Sale—Concurrence of Mortgagee to Release without Valuable Consideration—Failure to Produce to Steward—Effect—L.P.A., 1922, s. 129 (1).

Q. 2784. In 1919 A mortgaged two copyhold properties, Blackacre and Whiteacre, to B. A dies in 1926, and probate of his estate was granted to X and Y in 1926. In 1927 X and Y sold Blackacre, subject to manorial incidents, to M, the conveyance reciting that B, being satisfied with the security which would remain after the execution thereof, had agreed to join in the conveyance in the manner hereinafter appearing. The testatum states "the Mortgagee (B) as Mortgagee according to her estate at the request and by the direction of the Vendors (X and Y) as such personal representatives as aforesaid hereby surrenders and releases and the Vendors as personal representatives of A convey unto the Purchaser (M) All &c. . . ." and the habendum states the property is to be held unto the purchaser in fee

simple free from the money secured by the mortgage "and to the intent that as respects the property hereby conveyed the mortgage term shall merge." On a recent examination of the deeds it is ascertained that the conveyance has never been produced to the steward of the manor under the Law of Property Act, 1922, s. 129. It will therefore be necessary for a confirmatory deed to be completed for the purpose of vesting in the purchaser the outstanding legal estate. Section 116 of the Law of Property Act, 1925, enacts that a mortgage term shall, when the money secured by the mortgage has been discharged, become a satisfied term and shall cease, by which we understand it is the payment of the money which causes the term to merge and not the reconveyance or usual statutory receipt which is merely evidence of the payment. We shall be glad if you will give your opinion as to whether under the circumstances the legal estate for years, vested in B prior to the conveyance, is still outstanding in him so that it will be necessary to make him a party to the confirmatory deed.

A. We express the opinion that B should be made a party to the confirmatory deed. There is no question of the money secured by the mortgage being *discharged*. Certain property is being released from the mortgage debt, the mortgagee being satisfied with such security as will then remain. As the conveyance of 1927 was not produced to the steward pursuant to s. 129 (1) of the L.P.A., 1922, it is void so far as regards the surrender or release of the mortgage term (a legal estate).

Obituary.

MR. JUSTICE SAWREY-COOKSON.

Mr. Justice Sydney Spencer Sawrey-Cookson, Judge of the Supreme Court of the Straits Settlements, died at Penang, on Tuesday, 1st August, at the age of fifty-six. Educated at Uppingham and New College, Oxford, he was called to the Bar by the Inner Temple in 1903, and joined the North-Eastern Circuit. He was Judicial Commissioner of British North Borneo from 1910 to 1920, and a Judge of the Supreme Court of Gambia from 1920 to 1925. He became Puisne Judge of the Gold Coast Colony in 1925, and was transferred to the Straits Settlements last year.

MR. H. ARCHER.

Mr. Harold Archer, solicitor, of Ely, died at his home on Saturday, 29th July, at the age of eighty-eight. Educated at King's School, Ely, and Charterhouse, he served his articles at Ipswich, and having been admitted a solicitor in 1868, he joined his father in practice at Ely the same year. He held various appointments connected with the drainage of the Fens, and also took a prominent part in the affairs of the City of Ely. For many years he was a member of the Ely Local Board of Health, the Isle of Ely County Council, and the Ely Rural District Council.

MR. H. J. CAPON.

Mr. Herbert James Capon, M.D., L.R.C.P., M.R.C.S., L.S.A., barrister-at-law, died at Sonning Common, near Reading, on Wednesday, 9th August, at the age of eighty-two. Mr. Capon was called to the Bar by the Middle Temple in 1915.

MR. C. N. CLARKE.

Mr. Charles Neville Clarke, retired solicitor, of Birmingham, died at his home at Four Oaks recently, at the age of fifty-five. Mr. Clarke was admitted a solicitor in 1900, and practised with his father as Messrs. J. B. Clarke & Co., of Temple-street, Birmingham. He was a member of the Birmingham Law Society.

MR. A. E. STRINGER.

Mr. Alfred Edward Stringer, solicitor, partner in the firm of Messrs. Stringer & Hetherington, of Sandbach, Cheshire, died on Monday, 31st July, in his seventy-ninth year. Mr. Stringer was admitted a solicitor in 1877, and for twenty-six years had been Clerk to the Justices. He had also been Clerk to the Sandbach Council for about forty years, until he resigned a few years ago.

MR. W. VINCENT.

Mr. William Vincent, solicitor, senior partner in the firm of Messrs. Vincent & Vincent, of Budge-row, E.C., died on Tuesday, 8th August, at the age of seventy. Mr. Vincent, who was admitted a solicitor in 1886, had held the position of Clerk to the Willesden School Board.

Notes of Cases.

Judicial Committee of the Privy Council.

Ras Behari Lal and Others *v.* The King-Emperor.

Lord Atkin, Lord Thankerton, and Sir George Lowndes.

27th July, 1933.

CRIMINAL LAW—INDIA—CONVICTION OF MURDER—SOME EVIDENCE AND SPEECHES IN ENGLISH—JUROR'S INABILITY TO UNDERSTAND ENGLISH—CONVICTION AND SENTENCES SET ASIDE.

These were the appeals of Ras Behari Lal and seven others who were tried by the Sessions Judge of Patna, sitting with a jury of seven, and found guilty by a majority of six to one on charges of murdering a man named Sita Saran Singh and rioting. Three of the appellants were under sentence of death and five to transportation for life. On the 28th June, 1932, the High Court of Patna, on appeal, had confirmed the decision of the Sessions Judge. On the appellants' application for leave to appeal to His Majesty in Council, it was asserted that one of the seven jurors did not understand English, the language in which some of the evidence was given and in which the addresses of counsel were made and the charge of the Sessions Judge was delivered. An inquiry was, by order of His Majesty in Council, directed to be held by the High Court of Patna as to the truth of the allegation, and the High Court reported that the juror in question did not know sufficient English to follow the address of the lawyers, the Judge's charge, or the evidence in English. After consideration of that report, and on that ground, special leave to appeal was granted to the appellants.

Lord ATKIN, giving the judgment of the Board, said that in their Lordships' opinion the convictions could not be maintained. They thought that the effect of the incompetence of a juror was to deny to the accused an essential part of the protection accorded to him by law, and that the result of the trial in the present case was a clear miscarriage of justice. They did not doubt that in those circumstances the convictions and sentences should not be allowed to stand. Since the hearing of the case their Lordships had had their attention directed to the case of *Rex* v. *Thomas*, a decision of the Court of Criminal Appeal given on the very date on which this present case was before their Lordships. In that case the appellant had been convicted at the Merioneth Quarter Sessions of sheep stealing. He appealed on the ground, among others, that two of the jurors had not sufficient knowledge of the English language to enable them to follow the proceedings. His counsel sought to use affidavits by the jurors in question to that effect. The court refused to receive the evidence and dismissed the appeal against that conviction, although, on other grounds, they reduced the sentence. With the greatest respect for the members of the Court of Criminal Appeal they were unable to accept the reasons given

for their decision. The question whether a juror was competent for physical or other reasons to understand the proceedings was not a question which invaded the privacy of the discussions in the jury box or in the retiring room. It did not seek to inquire into the reasons for a verdict. If the alleged defect of the juror could be proved at all *aliunde* there seemed to be no reason why the evidence of the juror himself should not be available either for or against the allegation. The objection was not that the juror did not assent to the verdict, but that he so assented without being qualified to assent. His Lordship referred to *Ellis* v. *Deheer* [1922] 2 K.B. 113, *Ex parte Morris* (1907), 72 J.P. 5, and *Mansell* v. *The Queen* (1857), 8 E. & B., at p. 80. So far as *Rex* v. *Thomas* (*supra*) decided that no evidence was admissible after verdict to establish the inability of a juror to understand the proceedings, their Lordships definitely disagreed with it.

The result of upholding the objection in the present case was that there had been a mistrial. In England the ordinary order would be in such circumstances to award a *venire de novo* as in the case of *Rex* v. *Wakefield* [1918] 1 K.B. 216; 62 Sol. J. 309. Their Lordships, however, thought it desirable that any discretion as to any consequential order should be exercised by the High Court of Patna, and they contended themselves, therefore, with advising His Majesty that the appeals should be allowed, that the dismissal of the appeals by the High Court should be reversed, and the convictions and sentences set aside, leaving the representatives of the Crown in India to take such steps in the matter of a re-trial as might be open to them there.

Counsel: *D. N. Pritt*, K.C., and *C. Sidney Smith*, for the appellants; *A. M. Dunne*, K.C., and *W. Wallach*, for the Crown.

Solicitors: *Hy. S. L. Polak & Co.*; *Solicitor, India Office.*

[Reported by Charles Clayton, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

E. S. Davies (Inspector of Taxes) *v.* Braithwaite.

Finlay, J. 18th July, 1933.

Revenue—Income Tax—Actress—Tour Abroad—Profits or Gains taxable in United Kingdom.

This was an appeal by the Crown on a supplemental case stated by the Kensington General Commissioners. The case originally came before Rowlatt, J., in June, 1931, when he held that the various contracts entered into by Miss Lilian Braithwaite, the actress, were not "employments" in the sense of Sched. E, but incidents in the carrying on of her profession as an actress. He gave Miss Braithwaite the option of going back to the Commissioners to determine whether she was assessable under Sched. D. on the whole of her earnings or only on her earnings in the United Kingdom. The case then came again before the Commissioners in June, 1932, when the only question was whether the profits and gains received by Miss Braithwaite while outside the United Kingdom, in America, were liable to be included. It was admitted or proved that Miss Braithwaite was a British subject, and that during each of the years of assessment ending the 5th April, 1926, 1927 and 1928, she was resident in the United Kingdom within the meaning of the Income Tax Acts. During part of the year ended the 5th April, 1926, she acted in a play in America. The whole of the preliminary negotiations for that engagement were made by her before leaving England, but the actual contract was not made or signed until she arrived in America. At all other material times (including part of the year ended the 5th April, 1926) she exercised her profession in the United Kingdom. It was contended on her behalf, *inter alia*, that she was not liable to be assessed under Sched. D on the profits or gains received by her from carrying on her profession outside the United Kingdom. The Commissioners were of opinion that Miss Braithwaite's American earnings were not liable to be brought into assessment. The Crown now appealed.

Finlay, J., said that the matter admittedly came under case II of Sched. D: "Tax in respect of any profession, employment, or vocation not contained in any other Schedule." It was clear, in his opinion, that Miss Braithwaite carried on one profession, not a series of professions. If she went a tour of important cities abroad it could not be suggested that she was exercising one profession in Paris, another in Berlin, another in New York, and so forth. It was impossible to say that the American engagement was a separate profession carried on by Miss Braithwaite, and it seemed to him impossible on the facts of the present case, to come to any conclusion except that Miss Braithwaite carried on her profession in the material year partly in Great Britain. The Crown's appeal must be allowed.

Counsel: *The Solicitor-General* (Sir Boyd Merriman, K.C.), and *R. P. Hills*, for the Crown; *Needham*, K.C., and *J. S. Scrimgeour*, for Miss Braithwaite.

Solicitors: *Solicitor of Inland Revenue*; *Theodore Goddard and Co.*

[Reported by Charles Clayton, Esq., Barrister-at-Law.]

In re A Debtor (No. 29 of 1931), *Ex Parte* The Petitioning Creditors *v.* The Debtor.

Clauson, J., Luxmoore, J. 24th July, 1933.

Solicitors—Costs—Jurisdiction—Bankruptcy—Signing Roll of Solicitors.

This was an appeal from the Brentford County Court, raising a question of the right of a solicitor to recover his costs in a bankruptcy matter in a county court though he had not signed the roll of solicitors in that court. On 11th January, 1933, a petition for a receiving order was pending in that court and an order was made that the petitioning creditors' costs be taxed. The bill was brought in before the Registrar and the debtor took the general objection to all the items of the bill on the ground that the petitioning creditor's solicitor had not signed the roll of solicitors, and was therefore unable to practise in that court or claim any costs of so practising. The objection came before the county court judge who held the debtor was entitled to succeed on his objection, and the petitioning creditors now appealed.

Clauson, J., in reading the reserved judgment of the court, said the survey of certain of the relevant statutes led to the conclusion that a properly admitted solicitor of the Supreme Court had a statutory right to practise in the county court in its bankruptcy jurisdiction without any further qualification. But the claim for disallowance of the items in dispute was based not only on ss. 2 and 27 of the Solicitors Act, 1843, but also on s. 26 of the Solicitors Act, 1860, and ss. 43 and 44 of the Solicitors Act, 1932. Section 26 of the Solicitors Act, 1860 imposed penalties including that of incapacity to recover fees on any person who acted as a solicitor without due admission under the Act. If however, the court were right in the view that by the operation of the Bankruptcy Act, 1860, the necessity for a separate admission came to an end, s. 26 seemed to have no bearing on the matter. In the opinion of the court, Ord. 54, r. 7 of the County Court Rules did not apply to the county court as a court of bankruptcy. After the beginning of the proceedings in bankruptcy in which the costs were incurred in the present case, the Solicitors Act, 1932, became law. By s. 44 of that Act it was declared that every qualified solicitor might practise as a solicitor in the Supreme Court and on signing the roll of solicitors of any inferior court of law or equity which kept such a roll in that court. Even if it were open to the court to hold that the county court exercising bankruptcy jurisdiction was an inferior court, it would be quite impossible to treat that section as imposing a restriction on the right of solicitors to practise in the county court of bankruptcy as it then existed. It resulted that the solicitor with whose bill

the court were dealing was entitled to practise in the county court in its bankruptcy jurisdiction without signing the roll of that court. They therefore reversed the decision of the county court judge and ordered the debtor to pay the costs of the application to the judge which resulted in the order under appeal and also the costs of the appeal.

COUNSEL: *S. R. Sidebottom; C. H. A. Bennett.*

SOLICITORS: *Trollope, Winckworth & Sprott; Hiscocks and Co.*

[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division.

Collis *v.* Collis and Thomas.

Langton, J. 27th June, 1933.

DIVORCE—ALLEGATION OF ADULTERY BASED ON BIRTH OF A CHILD—INFORMAL SEPARATION OF PARTIES—ADMISSIBILITY OF HUSBAND'S EVIDENCE OF NON-ACCESS—*Russell* v. *Russell* [1924] A.C. 687; *Mart* v. *Mart* [1926] P.24, AND *Rimmer* v. *Rimmer* (1930), 144 L.T.R. 96, CONSIDERED.

This defended suit for dissolution raised an interesting question as to the limit of the exception to the rule in *Russell* v. *Russell* [1924] A.C. 687, where husband and wife have been living separate. The parties were married in June, 1926. In June, 1928, disagreements having arisen between them, they parted, the wife going to live with her mother at a distance of about 7 miles. The husband alleged adultery with a named co-respondent, but at the close of the petitioner's case there was a successful submission of no case against the co-respondent, and he was dismissed from the suit with costs. The case continued against the respondent, the petitioner relying on a charge of adultery based on the birth of a child to the respondent in April, 1931, the parties having remained separate since 1928. On behalf of the respondent, adultery was denied, and it was claimed that the petitioner was the father of the child born in 1931, marital intercourse having taken place at various meetings in 1930, and it was submitted that the petitioner could not be heard to give evidence negativing the presumption of access, that being inadmissible under the rule in *Russell* v. *Russell, supra.* On behalf of the petitioner it was submitted that there had been an oral agreement to separate, a fact proved otherwise than by the petitioner himself, and that such an agreement, if carried out, as it had been, would be sufficient to displace the presumption of access.

LANGTON, J., in giving judgment, said that the law of England as laid down in *Russell* v. *Russell, supra,* was clearly that a husband could not get over the presumption of law, that a child born in wedlock was legitimate, by offering evidence of non-access. However, it was now established that there were circumstances in which that presumption of law did not operate, and a husband could give such evidence, as in *Mart* v. *Mart* [1926], P. 24, which laid down that, on proof of a deed of separation and of the separation the husband could give evidence of non-access. The deed of separation was held to have the same effect as a judicial separation in removing the presumption of law. It had been suggested in a *dictum* of Sir Maurice Hill, in *Rimmer* v. *Rimmer* (1930), 144 L.T.R. 96, that proof of an oral agreement would surmount the presumption. He (his lordship), however, was not satisfied in the present case that there was anything like a permanent agreement for separation, understood as such and carried out, and therefore the petitioner could not be allowed to give evidence of non-access. Until the case actually arose of a well-established oral agreement for separation, it would not be right to decide the difficult point of law involved, though it was, doubtless, a matter which would arise for decision some day. The petition would be dismissed with costs.

COUNSEL: *Sir Reginald Blaker* and *Gordon Burge* for the petitioner; *Norman Parker* and *Graeme Low* for the respondent; *William Latey* for the co-respondent.

SOLICITORS: *Wilkinson, Howlett & Moorhouse; Lowe & Co.; Hutchinson & Cuff.*

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

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Societies.

Incorporated Society of Auctioneers & Landed Property Agents.

RECENT ELECTIONS.

Recent elections to the Society include the following:—

Fellows: L. J. Fallon (Manchester), A. B. Richardson Selby, Yorks), P. A.Chapman (Hythe), Stanley Kidd (Penrith, Cumbs.), F. H. Salmon (Great Yarmouth), H. S. Light (Woolston, Southampton), R. C. W. Neale (Sheffield), G. C. L. Payne (Ewell), T. H. Earle (London, W.1), Arthur Gray (York), E. A. Haines (Wimbledon Park), Ray N. Brinkman (New York City), J. E. Haslam (Prestatyn), H. G. Hawkins (Tankerton), E. L. Helsdon (Norwich), T. H. Pickstone (Freshfield, Liverpool), T. A. W. Lodge (York), J. H. Jameson (Whitley Bay), J. P. Sowerby (Liverpool), S. W. Killinger (Boscombe).

Associates: H. S. Morton (Maidwell, Northampton), Ian Murdoch (Purley), C. W. H. Keeler (Bristol), R. M. Guy (Bristol), A. C. Webb (Smethwick, Staffs), D. H. Twiss (Birmingham), A. D. Taylor (Skipton), Kenneth Rowley (Darlington), W. D. Whiffin (Rugby), A. J. Woolf (London, N.W.2), E. G. Jewell (London, N.W.6), A. E. Allison (Oxford), G. S. Ashbee (Maidstone), H. W. P. Noakes (Highams Park, E.4), H. J. Bailey (Selby, Yorks), E.B. Goodwin (Birmingham), Derek Hitchins (Burnham, Bucks), William King (Watford), R. D. Read (Ewell), E. R. Bumford (Ton Pentre, Glam.), A. B. Burton (Redhill), W. K. Moore (Ewell), A. H. Rose (London, W.1), W. H. Corby (Bournemouth), H. T. Bolus (Birmingham), T. D. Henderson (Newcastle, Staffs), Miss Joan Hutchinson (Rickmansworth), Arthur Pollock (Manchester).

The London Association of Certified Accountants.

EXAMINATION RESULTS.

The following candidates were successful in passing Sections I and II of the Association's Final Examination held in June last:—

Alder, B., Atkinson, H.K., Brookes, E. C., Bucklow, E., Carrington, J., Cooper, J. M., Harris, C. S. E., Hockaday, H., Hortopp, F. E. J., Hubbard, E. P., Hyman, R. S., Jennings, H. J., Job., F. H., Jukes, R. E., Magee, M. W., Martin, C. H. F., Mason, G. B., Miller, A. V., Parnell, C. W., Pester, F.A., Peters, H. W., Reynolds, N. T., Secker, C. A., Smith, C. H., Spencer, W. J., Sprawson, G. W., Wall, J., Waller, H. E., Warren, F. H. G., Wells, J., Wheeler, R., Willis, E. A., Winter, O. S., Zilberhertz., M.

In addition eighty-seven candidates passed Section I only, and 103 candidates passed Section II only.

The Auctioneers' and Estate Agents' Institute.

INSTITUTE PRELIMINARY EXAMINATION.

At the Preliminary Examination of the Auctioneers' and Estate Agents' Institute of the United Kingdom, on 21st and 22nd June last, 161 candidates sat, of whom eighty-six were successful, being 53.4 per cent.

Mr. E. W. Etheridge, West Croydon, was placed first in order of merit, thereby gaining the Institute Prize of five guineas in the form of text-books for the Professional Examinations.

Rules and Orders.

THE INDICTMENTS (PROCEDURE) RULES, 1933, DATED JULY 29, 1933.

Whereas it is provided by subsection (6) of section two of the Administration of Justice (Miscellaneous Provisions) Act, 1933* (in these Rules referred to as "the Act"), that the Lord Chancellor may make rules for carrying the said section two into effect and in particular, for making provision as to the manner in which and the time at which bills of indictment are to be preferred before any court and the manner in which application is to be made for the consent of a Judge of the High Court or of a Commissioner of Assize for the preferment of a bill of indictment:

Now, therefore, I, John Viscount Sankey, Lord High Chancellor of Great Britain, in pursuance of the said subsection (6) and of all other powers enabling me in that behalf do hereby make the following rules:—

Preferment of Bills of Indictment.

1. Subject as hereinafter provided, a bill of indictment shall be preferred before a court by delivering the bill to the proper officer of the court:

Provided that where with the assent of the prosecutor the bill is prepared by, or under the supervision of, the proper officer, it shall not be necessary for the bill to be delivered to the proper officer, but as soon as it has been settled to his satisfaction it shall be deemed to have been duly preferred.

2. Except with the leave of the judge or chairman, no bill of indictment shall be preferred at any assizes or quarter sessions after the first working day of those assizes or sessions.

Applications for leave to prefer a bill of indictment.

3.—(1) An application under paragraph (*b*) of subsection (2) of section two of the Act for consent to the preferment of a bill of indictment may be made—

(*a*) if the bill is to be preferred at any assizes, to a judge who is acting or is to act as judge at those assizes or at any previous assizes for the same county or place;

(*b*) if the bill is to be preferred at quarter sessions, to a judge who is acting or is to act as judge at any assizes for the area which includes the area for which the quarter sessions are to be held or any part thereof;

(*c*) in any case to the judge who is acting as judge in chambers in the King's Bench Division of the High Court.

(2) As respects applications for consent to the preferment of a bill of indictment at assizes or quarter sessions for a borough which is a county of a city or a county of a town, the foregoing provisions of this rule shall have effect as if references to the assizes therein mentioned included references to any assizes for the county which is for the purposes of the Counties of Cities Act, 1798,† considered as next adjoining the borough.

(3) References in this rule to a judge who is acting or is to act as judge at any assizes shall, in relation to assizes at which no judge of the High Court is present, be construed as references to the Commissioner of Assize who is acting or is to act as judge at those assizes.

4. Every such application shall be in writing, shall be signed by the applicant or his solicitor, and shall either be sent to the judge or commissioner by post or be delivered to his clerk.

5. Every such application—

(*a*) shall be accompanied by the bill of indictment which it is proposed to prefer and, unless the application is made by or on behalf of the Director of Public Prosecutions, shall also be accompanied by an affidavit by the applicant, or, if the applicant is a corporation, by an affidavit by some director or officer of the corporation, that the statements contained in the application are, to the best of the deponent's knowledge, information and belief, true; and

(*b*) shall state whether or not any application has previously been made under these rules and whether or not any proceedings have previously been taken under the Indictable Offences Act, 1848,‡ and the result of any such application or proceedings.

6.—(1) Where no proceedings have been taken under the Indictable Offences Act, 1848, the application shall state the reason why it is desired to prefer a bill without such proceedings having been taken, and—

(*a*) there shall accompany the application proofs of the evidence of the witnesses whom it is proposed to call in support of the charges; and

(*b*) the application shall embody a statement that the evidence shown by the proofs will be available at the trial and that the case disclosed by the proofs is, to the best of the knowledge, information and belief of the applicant, substantially a true case.

* 23-4 G. 5, c. 36. † 38 G. 3. c. 52. ‡ 11-2 V. c. 42.

(2) Where proceedings have been taken under the Indictable Offences Act, 1848, and the justice or justices have refused to commit the accused for trial, the application shall be accompanied by—

(*a*) a copy of the depositions; and

(*b*) proofs of any evidence which it is proposed to call in support of the charges so far as that evidence is not contained in the depositions,

and the application shall embody a statement that the evidence shown by the proofs and (except so far as may be expressly stated to the contrary in the application) the evidence shown by the depositions, will be available at the trial and that the case disclosed by the depositions and proofs is, to the best of the knowledge, information and belief of the applicant, substantially a true case.

(3) Where the accused has been committed for trial the application shall state why the application is made and shall be accompanied by proofs of any evidence which it is proposed to call in support of the charges, so far as that evidence is not contained in the depositions, and, unless the depositions have already been transmitted to the judge or commissioner to whom the application is made, shall also be accompanied by a copy of the depositions; and the application shall embody a statement that the evidence shown by the proofs will be available at the trial, and that the case disclosed by the depositions and proofs is, to the best of the knowledge, information and belief of the applicant, substantially a true case.

7. Unless the judge or commissioner otherwise directs in any particular case, his decision on the application shall be signified in writing on the application without requiring the attendance before him of the applicant or of any of the witnesses, and if the judge or commissioner thinks fit to require the attendance of the applicant or of any of the witnesses, their attendance shall not be in open court.

Unless the judge or commissioner specially gives a direction to the contrary, where an applicant is required to attend as aforesaid, he may attend by a solicitor or by counsel.

8. It shall be the duty of any clerk to justices or other person in possession of any depositions who is under any enactment entitled to charge fees for supplying copies thereof to give to any person desiring to make an application for leave to prefer a bill of indictment against the person who was accused when the depositions were taken, a reasonable opportunity to inspect the depositions and, if so required by him, to supply him, on payment of the proper fee, with copies of the depositions or any part thereof.

Definition of Proper Officer.

9.—(1) For the purposes of the Act and these rules the expression "proper officer" means, in relation to the High Court, the Master of the Crown Office and in relation to any court includes any deputy clerk of the court appointed under any enactment and also any such officer as may be nominated in that behalf by the judge or chairman of the court.

(2) In this rule the expression "High Court" does not include any court of assize.

Interpretation, short title and commencement.

10.—(1) In these rules the expression "depositions" means depositions taken before justices under the Indictable Offences Act, 1848, or under the Children and Young Persons Act, 1933,§ or any enactment repealed by that Act, and includes the statement of the accused and any document exhibited to such depositions:

Provided that any requirement of these rules that an application should be accompanied by a copy of any depositions shall, as respects documents exhibited to those depositions, be satisfied if a copy of such parts only of the exhibits as are, in the opinion of the applicant, material, accompanies the application, and the application contains an express statement to that effect.

(2) The Interpretation Act, 1889¶ shall apply for the purposes of the interpretation of these rules as it applies for the purposes of the interpretation of Acts of Parliament.

11. These rules may be cited as the Indictments (Procedure) Rules, 1933, and shall come into operation when the Act comes into operation.

Dated this 29th day of July, 1933.

Sankey, C.

§ 23-4 G. 5. c. 12. ¶ 52-3 V. c. 63.

THE SUPREME COURT FUNDS (NO. 2) PROVISIONAL RULES, 1933. DATED JULY 26, 1933.

I, the Right Honourable John Viscount Sankey, Lord High Chancellor of Great Britain, with the concurrence of the Lords Commissioners of His Majesty's Treasury and in pursuance of the powers contained in section 146 of the Supreme Court of Judicature (Consolidation) Act, 1925, and every other power

enabling me in this behalf, propose to make the following Rules :—

1. The words " or pleading " shall be deleted from Rule 32 (1), in each place where they occur.

2. In Rule 43,—(*a*) the words " in satisfaction " shall be inserted after the words " to appropriate " ; (*b*) the expression " Rule 8 " shall be substituted for the expression " Rule 11 " ; and (*c*) the words from " and whether so appropriated " down to " have been tendered," inclusive, shall be deleted.

3. Rule 44 shall be revoked and the following Rule shall be substituted therefor, and shall stand as Rule 44 :—

" 44.—(1) When money has been lodged in satisfaction of a claim under Order XXII of the Rules of the Supreme Court, and when and so far as money lodged under Order XIV has been appropriated in the manner provided in the last preceding Rule, payment shall (except in cases relating to infants or persons of unsound mind) be made by the Accountant-General to the person in satisfaction of whose claim it has been lodged, or to the person otherwise entitled thereto, or, on the written authority of either such person respectively, to his solicitor, upon receipt of a notification that the plaintiff accepts the sum lodged in satisfaction, and that due notice has been given of such acceptance, within the time limited by Order XXII, Rule 2, and upon a request or authority for payment of the same ; such notification and request or authority to be in the Form No. 35, 36 or 37, or as nearly as may be :

" Provided that no payment shall be made under this Rule in any case (*a*) where an Order has been received restraining such payment, or (*b*) where a defence of tender before action has been pleaded, or (*c*) where money has been lodged by one or more of several defendants.

" (2) When a request is made for payment of money lodged in Court on a notice, the original receipt and notice must, whenever so required, be produced at the Pay Office."

4. The following sub-paragraph shall be inserted at the end of paragraph (2) of Rule 67, and shall stand as part of that paragraph :—

" (K) any costs directed to be paid to the Official Solicitor shall be carried over to an account in the Pay Office books entitled ' Official Solicitor's Costs.' "

5. In Forms No. 19 and No. 23—(*a*) the words " or ' with defence setting up tender,' " shall be omitted ; (*b*) the expression " Rule 1 " shall be substituted for the expression " Rule 5 " and for the expression " Rule 6 " ; (*c*) the words " setting up tender " shall be substituted for the words " denying liability."

6. In Form 31,—(*a*) the word " satisfaction " shall be substituted for the word " respect," and (*b*) the words from " as under " down to " have been tendered," inclusive, shall be deleted.

7. Forms No. 32, No. 33, and No. 34 are annulled.

8. In Forms No. 35 and 36,

(*a*) the heading shall be deleted and the following heading substituted therefor :—

" Rule 44 (1)

A

In the High Court of Justice.

Request for payment of Money lodged, or appropriated, in satisfaction of claim (under Rule 1 or Rule 8 of Order XXII) " ;

(*b*) the expression " Rule 2 " shall be substituted for the expression " Rule 7 " ; and (*c*) the expression " (As in Form No. 32) " at the foot of the form shall be deleted and the following paragraphs shall be inserted in lieu thereof :—

" If remittance by post is desired, the payee (whether plaintiff or solicitor) should fill up and sign the request below, and send the Form, entire, to the Accountant-General, Royal Courts of Justice, W.C.2.

Date.....193..

I request that the above sum may be remitted to me, by post at the above address, by cheque crossed to (*insert* " my " *or* " our ").....
account at (*insert name of payee's bank*).....
Bank.

Signature (*in the case of a firm, one partner to sign as above. A firm-signature cannot be accepted*).

.....

A Partner in the Firm of.....

.....

9. In Form 37,—(*a*) the heading shall be deleted and the following heading substituted therefor :—

" Rule 44 (1)

A

In the High Court of Justice—King's Bench Division.

Request for payment to a Company of Money lodged, or appropriated, in satisfaction of claim (under Rule 1 or Rule 8 of Order XXII) "

(*b*) the expression " Rule 2 " shall be substituted for the expression " Rule 7 " ; and (*c*) the expression " Form No. 35 " shall be substituted for the expression " Form No. 32 " at the foot of the form.

10. These Rules may be cited as the Supreme Court Funds (No. 2) Provisional Rules, 1933, and the Supreme Court Funds Rules, 1927, as amended, shall have effect as further amended by these Rules.

And I, the said John Viscount Sankey, Lord High Chancellor of Great Britain, with the same concurrence as aforesaid, hereby certify that on account of urgency these Rules should come into operation (*a*) forthwith, in respect of all actions commenced on or after the 1st day of July, 1933, and (*b*) on the 1st day of August, 1933, in respect of all other actions, and hereby make the said Rules to come into operation as aforesaid as Provisional Rules.

Dated the 26th day of July, 1933.

Sankey, C.

Austin Hudson
Walter J. Womersley } Lords Commissioners of His Majesty's Treasury.

Legal Notes and News.

Honours and Appointments.

Mr. A. T. PADLEY, solicitor, of Market Rasen, Lincolnshire, has been appointed Clerk to the Magistrates at Market Rasen, in succession to his late father, who held the position for over fifty years.

Mr. J. ERNEST BIDDLE has been appointed Town Clerk of Merthyr Tydfil.

Mr. EDWARD ROBERTS, solicitor, of Dowlais, has been appointed Clerk of the Peace, Prosecuting Solicitor, and Deputy Town Clerk of Merthyr Tydfil. Mr. Roberts was admitted a solicitor in 1909.

Mr. H. B. J. PAULL, solicitor, of Coventry, has been appointed Clerk to the Chingford Urban District Council. Mr. Paull, who was admitted a solicitor in 1928, has been Senior Assistant Solicitor in the office of the Town Clerk of Coventry for the past four years.

Professional Announcements.

(2s. per line.)

THE SOLICITORS' MORTGAGE SOCIETY, LTD. (formed by Solicitors for Solicitors), invites particulars of FUNDS, or SECURITIES. Apply, The Secretary, 20, Buckingham-street, Strand, W.C.2. Telephone No. Temple Bar 1777.

Wills and Bequests.

Mr. Henry Terrell Peard, solicitor, of Croydon, left £27,530, with net personalty £17,593.

Mr. Russell Louis Riccard, solicitor, of South Molton, left £7,260, with net personalty £4,588.

Mr. William Farrington, retired solicitor, of Northenden, Cheshire, left £7,164, with net personalty £4,576.

Mr. Thomas Hodgson, solicitor, of York, who died on 1st March, left estate of the gross value of £11,261, with net personalty £11,202. He left £2,500 in trust for John William Tillotson and his wife Alice, and on the death of the survivor of them then one-fourth each to the York County Hospital, the British and Foreign Bible Society, the Leeds General Infirmary, and the Church Association. The ultimate residue of the property as to one-eighth each to the British and Foreign Bible Society, the London City Mission, the Open Air Mission, the Christian Community, the Church Association, the London Society for Promoting Christianity amongst the Jews, the Christian Colportage Association for England, and the Trinitarian Bible Society.

Mr. George Augustus Weston, retired solicitor, of Kidderminster, left estate of the gross value of £34,386, with net personalty £15,819. He left his collections of ivory carvings, polished stones, and precious and semi-precious stones, medals and coins, and Chinese snuff bottles, and an old oak court cupboard to Kidderminster Corporation to be exhibited in the Public Museum and called " The G. A. Weston Collections " ; £50 to the Vicar and Churchwardens of St. Mary, Kidderminster, for the benefit of the senior members of the choir and the bellringers ; £50 to Kidderminster and District General Hospital.

Mr. George Sydney Burton, solicitor, of St. John's Wood, N.W., and of Clarges-street, left £15,153, with net personalty £14,013.

Mr. William Early, solicitor, of Carlow, left personal estate in England and the Irish Free State valued at £5,727.

PRACTICE DEBATES DURING THE VACATION.

Rules for the conduct of future meetings were discussed at a meeting held in Room 602 at the Royal Courts of Justice on Tuesday last. The next meeting will be held at the Royal Courts of Justice (Room 602) at 7.30 p.m. on Tuesday, 15th August, when the subject for debate will be "That Heredity is stronger than Environment." Students and others interested are requested to communicate with the Hon. Organiser, Mr. E. Maitland Woolf, at 13, The Avenue, Highams Park, Essex, E.4. (Telephone: Walthamstow 0157). The fee is purely nominal.

THE MOYNE REPORT ON HOUSING.

Announcement by Minister of Health.

The Minister of Health on Friday, 4th August, made the following statement to a representative of the Press in connection with the Moyne Report on Housing:—

"The report is a document of the greatest interest and importance. It deserves and is receiving the close attention of the Government, and an announcement will be made in due course as to the decisions of the Government upon its recommendations.

"In the meanwhile it is clear that there is nothing in the recommendations of the Committee that at all affects or modifies the request contained in my circular letter (Circular 1331) of 6th April, 1933, to the Local Authorities of the country in which I request them to submit before the end of September programmes for dealing with the evil of the slums. The Moyne Report, indeed, carefully and expressly avoids making any recommendation or raising any question that would even indirectly have the effect of hindering or postponing immediate framing of those programmes.

"The request for the programmes stands unaffected, and it is expected that they will be submitted by the date mentioned."

LEGAL & GENERAL ASSURANCE SOCIETY LTD.

As a result of the negotiations which have been proceeding between the Legal & General Assurance Society Limited and the Metropolitan Life Insurance Company of New York, a petition was presented in the High Court on Friday, 28th July, and the agreement between the two companies was duly sanctioned by Mr. Justice Eve.

Under the agreement now made, all the policies issued by the British Isles Office of the Metropolitan Life Insurance Company of New York are transferred to the Legal & General Assurance Society.

ELDON LAW SCHOLARSHIP.

The trustees of the Eldon Law Scholarship will meet on 2nd November to consider applications for one of these scholarships of the value of £200 a year. Full information of the terms under which it is held can be obtained from the trustees' secretary, Mr. W. G. Trower, of 5, New-square, Lincoln's Inn, W.C.2.

COMMITTEE ON FOOD LAW.

The Minister of Health and the Secretary of State for Scotland have directed that the work of the Committee appointed on the 14th May, 1931, under the chairmanship of Sir Frederick J. Willis, K.B.E., C.B., J.P., to inquire into the working of the law as to the composition and description of articles of food other than milk, which was suspended in September, 1931, shall now be resumed, but that for the terms of reference set out in the minute of appointment of the Committee, the following terms of reference shall be substituted:—

"To consider whether it is desirable that the law relating to the composition and description of articles of food should be altered so as to enable definitions or standards to be prescribed, or declarations of composition to be required, for articles of food other than liquid milk; and if so to recommend what alterations of the law are required."

The Secretary of the Committee is Mr. W. J. Peete, of the Ministry of Health, to whom all communications on the subject should be addressed.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement Thursday, 17th August, 1933.

	Div. Months.	Middle Price 9th Aug 1933.	Flat Interest Yield.			†Approximate Yield with redemption		
ENGLISH GOVERNMENT SECURITIES			£	s.	d.	£	s.	d.
Consols 4% 1957 or after	FA	107¾	3	14	3	3	10	1
Consols 2½%	JAJO	73½	3	8	3	—		
War Loan 3½% 1952 or after	JD	99½	3	10	6	—		
Funding 4% Loan 1960-90	MN	110	3	12	9	3	8	6
Victory 4% Loan Av. life 29 years	MS	109¾	3	12	11	3	9	3
Conversion 5% Loan 1944-64	MN	116¼	4	6	0	3	4	5
Conversion 4½% Loan 1940-44	JJ	109½	4	2	2	2	19	6
Conversion 3½% Loan 1961 or after	AO	99½	3	10	4	—		
Conversion 3% Loan 1948-53	MS	97½xd	3	1	9	3	3	11
Conversion 2½% Loan 1944-49	AO	93	2	13	9	3	1	3
Local Loans 3% Stock 1912 or after	JAJO	85¼	3	10	4	—		
Bank Stock	AO	350½	3	8	6	—		
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	75	3	13	4	—		
India 4½% 1950-55	MN	106½	4	4	6	3	19	4
India 3½% 1931 or after	JAJO	84	4	3	4	—		
India 3% 1948 or after	JAJO	71¾	4	3	7	—		
Sudan 4½% 1939-73	FA	108	4	3	4	2	17	11
Sudan 4% 1974 Red. in part after 1950	MN	108	3	14	1	3	7	6
Transvaal Government 3% Guaranteed 1923-53 Average life 12 years	MN	100	3	0	0	3	0	0
COLONIAL SECURITIES								
*Australia (Commonw'th) 5% 1945-75	JJ	106	4	14	4	4	7	0
Canada 3½% 1930-50	JJ	97	3	12	2	3	14	10
*Cape of Good Hope 3½% 1929-49	JJ	99	3	10	8	3	11	8
Natal 3% 1929-49	JJ	94	3	3	10	3	10	5
New South Wales 3½% 1930-50	JJ	92	3	16	1	4	3	4
*New South Wales 5% 1945-65	JD	106	4	14	4	4	6	11
*New Zealand 4½% 1948-58	MS	104xd	4	6	6	4	2	9
*New Zealand 5% 1946	JJ	106	4	14	4	4	6	11
*Queensland 4% 1940-50	AO	100	4	0	0	4	0	0
*South Africa 5% 1945-75	JJ	110	4	10	11	3	18	9
*South Australia 5% 1945-75	JJ	106	4	14	4	4	7	0
Tasmania 3½% 1920-40	JJ	98	3	11	5	3	17	1
Victoria 3½% 1929-49	AO	93	3	15	3	4	2	0
*W. Australia 4% 1942-62	JJ	100	4	0	0	4	0	0
CORPORATION STOCKS								
Birmingham 3% 1947 or after	JJ	84	3	11	5	—		
Birmingham 4½% 1948-68	AO	112	4	0	4	3	9	3
*Cardiff 5% 1945-65	MS	110	4	10	11	3	18	9
Croydon 3% 1940-60	AO	93	3	4	6	3	8	0
*Hastings 5% 1947-67	AO	114	4	7	9	3	14	0
Hull 3½% 1925-55	FA	98	3	11	5	3	12	8
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	98	3	11	5	—		
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	71½xd	3	9	11	—		
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	84xd	3	11	5	—		
Manchester 3% 1941 or after	FA	84	3	11	5	—		
Metropolitan Consd. 2½% 1920-49	MJSD	91½xd	2	14	8	—		
Metropolitan Water Board 3% "A" 1963-2003	AO	86	3	9	9	3	10	10
Do. do. 3% "B" 1934-2003	MS	86xd	3	9	9	3	10	10
Do. do. 3% "E" 1953-73	JJ	93	3	4	6	3	6	5
*Middlesex C.C. 3½% 1927-47	FA	100	3	10	0	3	10	0
Do. do. 4½% 1950-70	MN	113	3	19	8	3	9	5
Nottingham 3% Irredeemable	MN	84	3	11	5	—		
*Stockton 5% 1946-66	JJ	112	4	9	3	3	16	2
ENGLISH RAILWAY PRIOR CHARGES								
Gt. Western Rly. 4% Debenture	JJ	100½	3	19	7	—		
Gt. Western Rly. 5% Rent Charge	FA	116½	4	5	10	—		
Gt. Western Rly. 5% Preference	MA	96	5	4	2	—		
‡L. & N.E. Rly. 4% Debenture	JJ	90¼	4	8	5	—		
‡L. & N.E. Rly. 4% 1st Guaranteed	FA	80½	4	19	5	—		
‡L. Mid. & Scot. Rly. 4% Debenture	JJ	92½	4	6	6	—		
‡L. Mid. & Scot. Rly. 4% Guaranteed	MA	86	4	13	0	—		
Southern Rly. 4% Debenture	JJ	100½	3	19	7	—		
Southern Rly. 5% Guaranteed	MA	112	4	9	3	—		
Southern Rly. 5% Preference	MA	100	5	0	0	—		

* Not available to Trustees over par.

† In the case of Stocks at a premium, the yield with redemption has been calculated as at the earliest date; in the case of other stocks, as at the latest date.

‡ These Stocks are no longer available for trustees, either as strict Trustee or Chancery Stocks, no dividend having been paid on the Companies' Ordinary Stocks for the past year.

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Printed by The Solicitors' Law Stationery Society, Ltd., at "Oyez" House, Fetter-lane, London, E.C.4, and Published at 29, Breams-buildings, E.C.4 ('Phone: Holborn 1853). Agents—The United States and Canada: The Carswell Co., Ltd., 145-149, Adelaide-street West, Toronto 2, Canada; India: Higginbothams, Publishers, Mount Road, Madras; Australia and New Zealand: "The Times," 255A, George-street, Sydney, N.S.W. Saturday, 12th August, 1933.